

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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:
CSX TRANSPORTATION, INC., :

:
Plaintiff, :

:
vs. : Civil Action No.:
: 1:05-DV-00338

ANTHONY A. WILLIAMS and :
DISTRICT OF COLUMBIA, : Hon. Ellen Segal
: Huvelle
Defendants. :

:
----- x

Washington, D.C.
Thursday, March 3, 2005

The deposition of JOHN M. GIBSON, JR.,
called for examination by counsel for Defendants,
pursuant to notice, in the offices of the
Attorney General for the District of Columbia,
Sixth Floor, 441 4th Street, N.W., Washington,
D.C., convened at 10:15 a.m., before Emma N. Lynn,
a Notary Public in and for the District of
Columbia, when were present on behalf of the
parties:

APPEARANCES:

On Behalf of the Plaintiff:
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Also Present:

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C O N T E N T S

WITNESS EXAMINATION BY COUNSEL FOR PLAINTIFF DEFENDANTS

JOHN M. GIBSON, JR.

By Ms. Mullen	--	4
By Ms. Sprague	156	--

E X H I B I T S

GIBSON DEPOSITION

MARKED

No. 1 7

No. 2 13

(All exhibits retained by Ms. Mullen.)

4

1 P R O C E E D I N G S

2 Whereupon,

3 JOHN M. GIBSON, JR.

4 was called for examination by counsel for the
5 Defendants and, having been first duly sworn by
6 the notary public, was examined and testified as
7 follows:

8 EXAMINATION BY COUNSEL
9 FOR THE DEFENDANTS

10 BY MS. MULLEN:

11 Q. Good morning, Mr. Gibson.

12 A. Good morning.

13 Q. My name is Marsha Mullen.

14 MR. NATHAN: John, keep your voice up.

15 BY MS. MULLEN:

16 Q. I am with the Office of the Attorney
17 General for the District of Columbia.

18 I have a few background questions to
19 ask you, and that's where we will begin.

20 I am sure that you have been adequately
21 prepared for your deposition today. It is just I
22 want to make sure if I ask you a question that you

5

1 don't understand, please tell me that you don't
2 understand the question. I will be happy to
3 rephrase. My questions are not formulated to trip
4 you up in any way. I am trying to be as
5 straightforward as possible. So be sure and tell
6 us if you don't understand the question.

7 Otherwise, the assumption is that you
8 understood the question and that you gave the
9 very best answer that you possibly could.

10 Have you been deposed before?

11 A. A couple times, yes.

12 Q. And in civil litigation?

13 A. Civil litigation? No.

14 Q. Where were you born?

15 A. Tampa, Florida.
16 Q. What year?
17 A. 1952.
18 Q. How far did you go in school?
19 A. Master's degree, MBA, Master's in
20 business administration.
21 Q. Where did you obtain that degree?
22 A. American University.

6

1 Q. And what was your minor?
2 A. Undergraduate I carried two majors:
3 economics and public administration. The MBA was
4 in finance.
5 Q. Could you just give us a thumbnail
6 sketch of your past work experience for the last
7 five years.
8 A. The last five years would encompass a
9 job I had prior to the current job. I was vice
10 president of passenger and operations planning
11 about five years ago. And then in the last two
12 years I have been vice president of operations
13 research and planning.
14 Q. And that is with CSX?
15 A. With CSX, yes.
16 Q. In the affidavit that you prepared you
17 mentioned that you ran a rail subsidiary?
18 A. Subsidiary, wholly-owned subsidiary for
19 about a year.
20 Q. What subsidiary is that?
21 A. It is the Three Rivers Railroad.
22 MS. MULLEN: Why don't we mark Mr.

7

1 Gibson's affidavit as Exhibit No. 1, because we
2 will be making several references to it. It
3 might as well be an exhibit. I assume you have a
4 copy. I have copies for everyone, in case you
5 need an extra.
6 THE WITNESS: Yes, I do.
7 MS. MULLEN: Everyone has a copy?
8 MS. SPRAGUE: Yes.
9 (Gibson Exhibit No. 1 was
10 marked for identification.)
11 BY MS. MULLEN:
12 Q. In preparing for your deposition today,

13 did you review any documents?

14 A. Yes.

15 Q. And I have before me documents that
16 have been produced by your counsel. There is an
17 index of these documents. Did you review all of
18 the documents that are in this batch that were
19 produced by your counsel in preparation for your
20 deposition today?

21 A. Either in preparation or I have
22 knowledge of them from other, earlier readings.

8

1 Q. Why don't we go through the index and
2 you can tell me the significance of the particular
3 document.

4 A. Okay.

5 Q. And then if it is a document that was
6 relied upon for your affidavit, you need to let me
7 know.

8 A. Okay.

9 Q. The first document is a standard form
10 for detour agreement.

11 A. Right.

12 Q. Can you tell us what this document is?

13 A. This is an agreement that allows
14 participating railroads -- and it is a standard
15 form agreement, because several railroads use this
16 same standard form -- to allow emergency movement
17 of the freight trains over their territories.

18 An example would be a hurricane. We
19 had several in Florida this year. Some of our
20 lines were not operable and so we use standard
21 form agreements with specifics to that particular
22 event to reroute trains of CSX over the Norfolk

9

1 Southern.

2 Q. Is this generic or is this one that has
3 some -- it is just a standard form agreement. I
4 haven't had an opportunity, of course, to read
5 it. It is just a generic blank form?

6 A. Correct.

7 Q. It has no particulars pertaining to any
8 party?

9 A. Any one of the agreements, that's
10 correct. We use that as we have an emergency that

11 might require the use of that; that's our base
12 document. The fees are negotiated and the consent
13 of the other railroad is required.

14 Q. Thank you.

15 The next document is master trackage
16 rights agreement.

17 A. Yes.

18 Q. Can you tell us about that document?

19 A. There are three trackage rights
20 agreements. These were produced because they are
21 the relevant trackage rights agreements allowing
22 the use of Norfolk Southern, to cross and use our

10

1 tracks for certain trains in this area.

2 They are the only joint -- it asked for
3 relevant joint facility agreements, and these are
4 the joint facility agreements that are in
5 existence today between us and the Norfolk
6 Southern in the metropolitan D.C. area.

7 Q. What is the life of these agreements?
8 When were they first created?

9 A. I believe they would all be of the same
10 date, 1999, June 1st.

11 Q. And they are current?

12 A. Yes.

13 Q. Form A is an addendum, I believe, to
14 the same document.

15 A. That's right. It is just to complete
16 the document. It makes reference to the specific
17 tracks that the agreement covers.

18 Q. The next document is a freight rail
19 bottom line report.

20 A. Correct.

21 Q. Of significant length?

22 A. Yes.

11

1 Q. Can you tell us about this batch of
2 documents, sir?

3 A. The association, American Association
4 of State Highway and Transportation Officials,
5 whose shortcut name is SHTO, produced this report
6 a couple years ago. I don't recall the exact
7 date. It documents a need in the minds of SHTO
8 for investment in the freight infrastructure, but

9 it also documents the difference in safety of
10 hazardous material movement as well as other kinds
11 of safety, rail versus truck. So it describes,
12 you know, with some particulars which mode of
13 transportation is safer for various commodities.

14 Q. Thank you.

15 A. And it is referenced in 27, paragraph
16 27.

17 Q. In your affidavit?

18 A. That's right.

19 Q. The next is CSX operating rules which
20 were effective October 1st, 2004.

21 A. Right. And that actually includes all
22 three of these documents that are CSX's operating

12

1 rules, and they specifically, in this second form,
2 specifically deal with how to handle when cars of
3 hazardous material are involved in movement.

4 So it describes, you know, the
5 procedures for handling all of our train
6 operations, how to do that safely. It also
7 specifically describes how to handle hazardous
8 material cars.

9 Q. The next document is a Department of
10 Transportation hazardous materials incident
11 report.

12 A. Correct.

13 Q. And tell us about this document.

14 A. It is a reference to minor spill in the
15 last 10 years. This is the base document for
16 that.

17 Q. So it is the standard document that all
18 railroad companies would complete?

19 A. Yes.

20 Q. If there was an accidental leakage or
21 any type of incident regarding --

22 A. A leakage. A hazardous release.

13

1 Q. Of any kind.

2 A. It is mentioned in paragraph 12.

3 Q. The next document deals with the D.C.
4 area, "PIH and Explosive HAZMAT Reroute Analysis."

5 A. Correct.

6 Q. Please tell us about that document.

7 A. This is the base document that I use to
8 be able to describe -- it is the analytical work I
9 asked to be performed to describe the additional
10 car miles and handlings that the D.C. Act would
11 impose on our freight network.

12 Q. And you relied upon this in preparing
13 your affidavit in this case, correct?

14 A. Yes.

15 Q. Could you explain to us just what
16 information is captured in this document. It has
17 got several columns. If you could give us an
18 explanation as to the significance.

19 And we will mark this one as Gibson 2.

20 (Gibson Exhibit No. 2 was
21 marked for identification.)

22 THE WITNESS: Let's start at the top of

14

1 the chart and work from left to right, if that is
2 okay.

3 BY MS. MULLEN:

4 Q. Perfect.

5 A. The "D.C. Area PIH and Explosive HAZMAT
6 Reroute Analysis" is the header of it. And when
7 it says PIH and Explosive HAZMATs, this
8 aggregation of data refers to the standard
9 transportation commodity codes. We call them
10 STCCs in the industry, for the materials that are
11 banned in the D.C. Act.

12 Next below that are loads empty and
13 total. So the act applies to loaded cars, empty
14 cars and then we summarized, we totaled those
15 cars.

16 Under the loads, there are three
17 categories of data. One is the number of annual
18 shipments. The next is the additional annual car
19 miles, and the finally is the additional annual
20 car handlings. Under the empty column, you have
21 the same three categories, and the same under the
22 total.

15

1 The title is different under the
2 total. It says annual shipments and empty trips.
3 The total column adds for the like columns the
4 loads and the empties. Are we okay?

5 Q. We are fine.

6 A. Below that are three rows. The first
7 row is base case with no reroute. That is the
8 current operating plan. Our computer models that
9 are required for this work are charged with
10 routing traffic the most efficient way, minimizing
11 car loadings and handlings. So if there were no
12 reroutes, then obviously there would be no
13 additional car miles and there would be no
14 additional handlings. So that's why that is the
15 base case and there are zeros in those columns.

16 The next one is the Virginia Avenue
17 tunnel reroute only, and it shows the impact of
18 not being able to use the Virginia Avenue tunnel
19 for either loads or empties, individually, and
20 then summarized together, and what impact that
21 would cause for the individual cars that would
22 have used that route in the efficient operating

16

1 plan.

2 (Witness and counsel conferring.)

3 THE WITNESS: The Virginia Avenue
4 tunnel is a fixture on CSX. It is on what is
5 commonly called the I-95 route or the north-south
6 route. It is a specific location on that line
7 just north of where passenger trains would go into
8 Union Station. So that would be freight only
9 moves associated with that particular location.

10 The next row is Virginia Avenue and
11 metropolitan capital sub-reroute and that is if
12 neither the east-west B&O line as we described in
13 the affidavit nor the north-south I-95 line are
14 available, the cars that are currently involved in
15 these STCC codes would have to take the additional
16 miles and incur the additional handlings for both
17 loads and empties shown on that line, and they are
18 totaled again on the right-hand side.

19 BY MS. MULLEN:

20 Q. How did this translate into dollars
21 and cents?

22 A. We didn't do a specific cost study for

17

1 any of this, for either the Virginia Avenue --
2 I-95 reroute or the north-south or east-west

3 reroute.

4 Q. Why didn't you do a cost study?

5 A. Well, there are three kinds of costs.

6 There are direct costs. There are indirect costs,
7 and then there are, you know, other outside our
8 company costs either to shippers or to the public.

9 The direct costs are a fraction of the
10 total costs, and it would be misleading to use
11 that as any kind of decision point.

12 Q. And why would it be misleading?

13 A. Because of the size of the direct
14 costs.

15 Q. Because they are a fraction of the
16 total?

17 A. Yes.

18 MR. NATHAN: Was that a yes?

19 THE WITNESS: Yes. I agree.

20 BY MS. MULLEN:

21 Q. And indirect costs?

22 A. For CSX, it would include elements of

18

1 the congestion primarily and inefficiency. We
2 have a rail network that is pushing its physical
3 capacity and any inefficiencies thrown into that
4 create an issue that simply can't be predicted
5 and it is very difficult to measure.

6 The indirect costs for customers which
7 include lengthening supply chains and throwing
8 uncertainty into the movement would require new or
9 additional equipment that is not in the
10 marketplace at the moment and could, depending on
11 circumstance, lead to potential shutdowns
12 depending on their inventory and their delivery
13 schedules.

14 Also from an indirect standpoint it
15 puts the risk of additional miles and additional
16 handlings in terms of possible release in other
17 communities.

18 Q. And that you associate with an indirect
19 cost the safety and security issues that might
20 occur in areas outside of Washington, D.C.?

21 A. As a result of additional miles and
22 handlings, yes, you increase the risk of an

19

1 additional -- of some release.
2 Q. I guess I need further explanation on
3 this. You say that the direct costs are such a
4 fraction of the total costs that it would somehow
5 be misleading. Am I characterizing your
6 testimony correctly?
7 A. I believe that, yes.
8 Q. Could you explain why. The direct cost
9 is part of the overall cost, correct?
10 A. Yes.
11 Q. Then it would have to be part of the
12 equation. So it wouldn't necessarily be
13 misleading. It would be a fraction of the total
14 cost, but it would be part of the whole, correct?
15 A. Yes.
16 Q. So you are saying that the reason you
17 didn't do a cost out on the direct is because it
18 would be misleading?
19 A. Yes.
20 Q. And it wouldn't be misleading if it is
21 taken in conjunction with the indirect and the
22 outside costs?

20

1 A. If those could be calculated, yes.
2 Q. You are saying that it is impossible to
3 calculate the indirect costs?
4 A. Yes.
5 Q. Would it be fair to say that the part
6 of the overall cost might be speculative, but it
7 is not necessarily impossible to come to some
8 rational amount or estimate of the cost? I am
9 excluding things that would be catastrophic in
10 nature. In other words --
11 A. From my experience, no.
12 MR. NATHAN: I don't understand the
13 question. Maybe you could rephrase the question.
14 BY MS. MULLEN:
15 Q. Did you understand the question?
16 A. You are asking if it would be possible
17 to speculate as to the indirect costs?
18 Q. Actually it wasn't a very good
19 question. Here is what I am driving at. In
20 calculating the cost of rerouting, if you
21 eliminate the possibility of something
22 catastrophic in another geographical area --

1 A. Okay.

2 Q. -- because we all know that might be in
3 the billions if there was some sort of accidental
4 leakage that was of great magnitude, if you
5 eliminate something on the most extreme side,
6 because we don't know what that might cost, isn't
7 there some sort of formula that you use in order
8 to know what the company is going to be spending
9 on rerouting?

10 A. No, not on the indirect costs.

11 Q. Let's look at the direct costs then.
12 Can you give us any figure as to the direct cost
13 of the rerouting in this particular case, what it
14 would cost your company?

15 MR. NATHAN: Recognizing he has
16 testified there is no study of this, you are
17 asking him for a best estimate as he sits here
18 today?

19 MS. MULLEN: Yes, we recognize you
20 didn't do a cost study.

21 THE WITNESS: Right.

22 BY MS. MULLEN:

1 Q. But I am assuming with your vast
2 experience that you have some idea.

3 A. There is a couple of direct costs that
4 could be applied to the data that is here that
5 would ballpark some of the direct costs from a car
6 mile standpoint --

7 MS. SPRAGUE: Just keep in mind
8 confidentiality issues.

9 MS. MULLEN: Are you instructing him
10 not to answer because there is something
11 confidential?

12 MS. SPRAGUE: There is a way to answer
13 that would be a confidential way so that the
14 information could be supplied so we could not get
15 into proprietary information since we are not
16 operating under a protective order.

17 MR. NATHAN: Which we submitted.

18 MS. MULLEN: I know the parties
19 couldn't come to an agreement on a protective
20 order which puts us automatically at a

21 disadvantage in terms of asking questions.
22 MS. SPRAGUE: I think there is an answer

23

1 you can get that would not get into specific
2 proprietary information. I am just cautioning the
3 witness to keep that in mind in answering.
4 THE WITNESS: Without the specifics of
5 how to get their component-by-component of cost,
6 you know, the direct costs on a system, average
7 basis of cost, without looking at these
8 specifically I would expect it would be in the \$2
9 to \$3 million range per year.

10 BY MS. MULLEN:

11 Q. And that is specific to the rerouting
12 that is at issue in this case?

13 A. It is a generally applied cost of
14 moving cars in the CSX network applied to the
15 miles and handlings that are on this page. It is
16 not specific --

17 MR. NATHAN: The witness is referring
18 to Exhibit 2.

19 THE WITNESS: It is not specific. It
20 is system average cost.

21 BY MS. MULLEN:

22 Q. Does the system average cost include

24

1 the counting of the empty cars as well?

2 A. It would count empty cars. It would
3 not have categories of direct costs that a
4 specific study could identify, you know, in terms
5 of things like specific crew costs, specific fuel
6 costs, those kinds of things.

7 Q. Which would be additional costs?

8 A. Yes.

9 Q. So you would be exceeding the \$2 to \$3
10 million estimate?

11 A. Well --

12 Q. Or they would be included?

13 A. Estimating, I think it would still be
14 in that range as a guess.

15 Q. The last batch of documents that you
16 produced is a database printout. Can you tell us
17 about this printout?

18 A. This is graphical representation of the

19 gross ton miles on our network by line segment.
20 So on the left is the identification of the
21 subdivision, which is a portion of our entire
22 network, and then there are gross ton miles in

25

1 each direction on that specific line segment.
2 Q. These are ton miles as opposed to car?
3 A. That's correct.
4 Q. And what's the significance of this
5 database?
6 A. Well, there are -- in the affidavit we
7 talk about the difference between the kinds of
8 lines that CSX has. Some are high volume, high
9 density main lines, some are secondary main lines,
10 some are strictly branch and local traffic lines.
11 And this table would, you know, be a more precise
12 way of describing those line segments.
13 Q. Is this table referenced specifically
14 in any paragraph of your affidavit?
15 A. No, it is not.
16 Q. It would serve as a base document for
17 the information in your affidavit?
18 A. Yes.
19 MS. MULLEN: Do you think for
20 clarification it would be a good idea to identify
21 those documents just by number, or do you think
22 the record will be clear without that? We have

26

1 referred to Mr. Gibson's affidavit and the one
2 table. Do you think that will be clear enough?
3 MR. CASPARI: Which of the documents
4 are you referring to?
5 MS. MULLEN: This group. This is all
6 we have.
7 THE WITNESS: We have an index.
8 MS. MULLEN: Mr. Gibson pointed out we
9 have an index. That's fine. There are so many I
10 didn't want it to get confusing.
11 MS. SPRAGUE: I think you made a clear
12 record.
13 BY MS. MULLEN:
14 Q. There are several questions I have
15 regarding the rerouting. You are the expert, not
16 me. So please, if you don't understand my

17 questions, I will be happy to rephrase.
18 The first question I have is what
19 hazardous materials and in what quantity and with
20 what frequency were removed from the north-south
21 line?
22 A. We did not aggregate the data that

27

1 way. I don't have that. I don't know that.
2 Q. Would it be possible for you to
3 aggregate the data in that fashion?
4 A. Yes.
5 Q. And what would you have to do in order
6 to come up with the answers to those questions?
7 A. We would have to relate to two
8 databases covering the traffic that is in
9 question and pull data from those two, one that
10 deals sort of with our commercial side of the
11 house and one that deals with our transportation
12 side of the house, and then we would be able to
13 aggregate it the way you mentioned.
14 Q. Is Exhibit 2 at all useful in answering
15 the questions?
16 A. This one (indicating)?
17 Q. Yes.
18 A. Again, we did not aggregate in that
19 manner. We pulled against all of the STCC codes
20 that are subject of the act, but did not subtotal,
21 so to speak, any of the data in the way she is
22 asking.

28

1 Q. The STCC codes, again, would you tell
2 me what that means?
3 A. The Standard Transportation Commodity
4 Code. It is usually abbreviated S-T-C-C, commonly
5 called STCC.
6 Q. Would you be able to tell us what
7 hazardous materials continue to be shipped on the
8 north-south line through the District?
9 A. There are -- in the time since May,
10 since our voluntary reroute?
11 Q. Yes.
12 A. Primarily it is the empties and then
13 there is a handful of cars that we voluntarily
14 rerouted that were not voluntarily rerouted that

15 are covered by the ordinance. And in that period
16 it is about 10 cars.

17 MR. NATHAN: I think she is asking what
18 were the hazardous materials.

19 THE WITNESS: They were primarily
20 chlorine and propane.

21 MS. SPRAGUE: Actually I thought you
22 were asking generally hazardous material as a

29

1 broader class than the banned materials covered by
2 the act. Is that what you were asking?

3 MS. MULLEN: No. I am asking what
4 hazardous materials continue to be shipped on the
5 north-south line.

6 MS. SPRAGUE: Then I object to the
7 question because if that is not what you meant to
8 say that's what you are asking. There are many,
9 many hazardous materials, only a subset of which
10 are covered by the act.

11 MS. MULLEN: I think your objection is
12 a good one. Let's keep it only to those that are
13 banned by the act.

14 THE WITNESS: Okay. Since May, above
15 and beyond our voluntary reroute, the hazardous
16 materials covered by the act moving on the
17 north-south line are predominantly empty cars, and
18 then there is a very small number, about 10, cars
19 that have moved that were not part of the four
20 STCC codes that we voluntarily rerouted which are
21 covered by the ordinance.

22 BY MS. MULLEN:

30

1 Q. Same question but as it applies to the
2 east-west line through the District.

3 A. Well, I think these numbers give you a
4 good handle on what is moving east-west.

5 Q. When you say "these numbers," you are
6 referring to what has been marked as Exhibit 2?

7 A. Right.

8 Q. And would you point out specifically
9 what numbers you are referring to.

10 A. The total reroute of cars within the
11 banned materials of the act of both Virginia
12 Avenue and the Metro sub-reroute totaled 6,939

13 loads, 4,461 empties for a total of 11,400 cars.
14 If you subtract from that the Virginia Avenue
15 reroute of 1,584 loads and 2,103 empty carloads,
16 that would be the east-west volume.
17 Q. When you say "10 cars," what time span
18 are you talking about?
19 A. Between May and January of '05.
20 Q. Ten cars a day?
21 A. Total.
22 Q. Total?

31

1 A. Right.
2 Q. Since May?
3 A. In the records we pulled, that's what
4 we found.
5 Q. Has there been a variation in the
6 routing of the banned materials between April
7 2004 and March of 2005?
8 A. I'm sorry.
9 Q. Has there been a variation in the
10 routing of the materials? I guess, have you made
11 additional changes in the rerouting?
12 MS. SPRAGUE: I don't understand the
13 question.
14 MR. NATHAN: I don't understand.
15 BY MS. MULLEN:
16 Q. Do you understand the question?
17 A. No.
18 Q. That's what is important. Not what
19 your lawyers understand.
20 A. I understand that, but I don't
21 understand the question.
22 Q. Then I am in trouble.

32

1 Well, can you just give us an idea of
2 the rerouting and how it works, when you get to
3 the District of Columbia.
4 A. Okay. Again, we have what we call an
5 operating plan. That plan is a combination of
6 computer technology and hands-on skilled
7 understanding of the network by individuals who
8 are expert at the territory.
9 That operating plan routes cars the
10 most efficient way possible, trying to minimize

11 handlings and car miles.
12 What we have done in order to effect
13 the voluntary reroute is to eliminate the line
14 segment for the commodities that we voluntarily
15 rerouted going north-south through the D.C. area,
16 what we commonly call I-95.
17 The computer-generated trip plan for
18 every car then is created through our model, this
19 ACT model that is described at the end, I think
20 around 58, 59 paragraphs. That will be the next
21 most efficient route for that car, again
22 minimizing handlings and miles on the basis that

33

1 the line segment in question is not available.
2 So, in essence, if you take all of the
3 possible, not all of the currently used, but all
4 of the possible STCC codes covered by the
5 ordinance, it is actually a little more than 2800
6 possible commodities, many of which are reserved
7 for future commodities that don't currently move,
8 but you still have to protect against the entire
9 set, and that is laid against a 330 yard network
10 and every yard has instructions created for any
11 car that might show up of that commodity wanting
12 to take that route. So that is the operating plan
13 and that's how the reroute occurs.

14 Q. Why were you voluntarily rerouting the
15 banned materials in the Washington area?

16 A. In our approach to things we have a
17 need to know sort of approach to security. I was
18 told that in consultation with the Federal
19 agencies, DSA, Homeland Security, there was a
20 specific credible threat that the reroute of these
21 cars on that line segment should be accommodated,
22 and so we went forward with that.

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1 Q. And you did so willingly based on your
2 appreciation for the threat that could be posed
3 in the District of Columbia, given its unique
4 stature?

5 MR. NATHAN: I object to that.

6 THE WITNESS: I don't have specific
7 knowledge of that.

8 MS. MULLEN: Hold on. What is the

9 basis for your objection?
10 MR. NATHAN: I object to the phrasing
11 of the question that includes words that are not
12 the witness's words.
13 MS. MULLEN: If the objection is to the
14 characterization, fine. Noted.
15 BY MS. MULLEN:
16 Q. Would it be fair to say you recognized
17 that the District of Columbia is unique in stature
18 because it is the capital?
19 MR. NATHAN: When you say "you" --
20 MS. MULLEN: I am asking the question.
21 MR. NATHAN: I object to the question
22 because the witness has told you that it is on a

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1 need-to-know basis and this is what he
2 understands. When you say "you," these are not
3 decisions he made, and I don't hear that he
4 participated in them. And I also think you are
5 attempting to put words in his mouth.
6 If you ask what the company did and his
7 understanding of the basis for the company, I have
8 no objection. But try to do that without leading
9 questions and without misleading that this is
10 something that he participated in or has firsthand
11 knowledge of.
12 MS. MULLEN: Are you finished?
13 MR. NATHAN: Yes.
14 BY MS. MULLEN:
15 Q. Mr. Gibson, I am in no way trying to
16 put words in your mouth. Please, at any time if I
17 do not correctly state your position, make it
18 clear for the record, because it is your
19 testimony. Not mine.
20 Also when I say you, I am not speaking
21 of you personally, sir. I understand what your
22 position is and how decisions are made and that

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1 you are not personally who I am talking about.
2 We are talking about your company, of course.
3 Is it your understanding that the
4 District of Columbia is unique in that it is the
5 capital of the free world and that we have been
6 under threat?

7 MR. NATHAN: I object. Once again,
8 when you say "is it your understanding," you mean
9 Mr. Gibson's or the company's? I don't think we
10 need this. This is not very useful. Your
11 characterization --

12 MS. MULLEN: What is not useful?

13 MR. NATHAN: Your characterization of
14 D.C. as the capital of the free world.

15 This is a railroad man who knows about
16 operations. He gave an affidavit and this issue
17 is about what is in his affidavit. That's what
18 the judge said we were having this deposition
19 about. Not about discussions of the free world
20 and Washington's place in the free world.

21 MS. MULLEN: It does go to the heart
22 of this case because we are unique and that's why

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1 the legislation was drawn.

2 MR. NATHAN: That's your argument, but
3 let's put questions to the witness that are
4 within the range of what the judge said this
5 deposition should be about.

6 MS. MULLEN: We don't need all this
7 discussion. Your objection has been noted for the
8 record.

9 BY MS. MULLEN:

10 Q. Why don't we turn then to a discussion
11 about your computer simulation and optimization
12 models.

13 A. Okay.

14 Q. Can you identify each of the computer
15 simulation and optimization models that you
16 referred to in paragraph 4 of your affidavit.

17 A. They are basically described in, I
18 believe, paragraphs 58 and 59.

19 Q. Right.

20 A. The Algorithmic Class Tracking System,
21 as we call the ACTS, is our program for ensuring
22 the routing of cars to trains, cars to blocks,

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1 blocks to trains, trains to origin and
2 destination. The model is proprietary software by
3 an outside vendor. It is designed specifically to
4 CSX's geography and operation. So it is unique to

5 CSX. We use it under license, but the software
6 itself is third-party.

7 Q. Do you have models that you have
8 experience in the use of? What do you mean by
9 that?

10 A. Well, this particular model is used for
11 routing decisions every day at the company. I
12 have used these models, directed people to use
13 these models to answer various kinds of questions
14 of trying to create either a customer desired
15 movement in order to attract business or looking
16 for ways to improve efficiency and also to address
17 tactical issues that may arise in the network.

18 Q. Are there any other purposes for the
19 computer model in addition to the ones you just
20 described?

21 A. Other purposes? No. It is used to
22 create and maintain our operating plan. We can

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1 use it to approximate whether a change in that
2 operating plan is more or less efficient than the
3 current operating plan. That's what we use it
4 for.

5 Q. Thank you.

6 Let's turn to paragraph 22. In
7 paragraph 22, when you say that "The program
8 recommends a route for each car," are you
9 referring to any such computer model?

10 A. Yes. Exactly this one, the ACT.

11 Q. And the ACT is the one that recommends
12 a route for each car?

13 A. Correct.

14 Q. Have you personally used a computer
15 model program to determine routing?

16 A. No.

17 Q. What is your role in the process in
18 determining the routing?

19 A. I direct the studies through the
20 operations research part of my organization.

21 Q. When you direct the studies, what do
22 they encompass?

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1 A. Normally it is a question as to what
2 should be done. Here are two options. Which one

3 is the better option. That's the normal style of
4 inquiry that we try to address with these studies.

5 Q. Who makes the final decision as to
6 what would be the most efficient option?

7 A. Well, the efficiency of the option is
8 determined by our work. Whether that option is
9 chosen or not depends primarily on who is asking.
10 If it is a commercial group, they may or may not
11 be concerned about the difference between the two
12 options. If it is the transportation group, you
13 know, it may be trying to address an outage on the
14 line or a terminal at capacity and needs a
15 different operating plan at that terminal. Those
16 are typical of the kinds of questions we have.

17 Q. In using the computer model programs,
18 has that led your company to reroute shipments on
19 one line to another line?

20 A. Yes.

21 Q. And could you give us an example.

22 A. I am trying to think of something.

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1 There is a yard in Richmond call Acca Yard. About
2 this time last year, it was severely congested and
3 trains, both passenger and freight trains, were
4 backing up as a result of not being able to get
5 through the congestion in the Acca Yard. So we
6 did some studies of several kinds of traffic, you
7 know, trains, not specific commodities, but
8 trains, to see if there were alternate flows that
9 would allow us to have a more efficient operation
10 at Acca without doing great damage to some other
11 part of the network where those flows would then
12 go.

13 Q. Thank you.

14 The computer model program, has it led
15 you to reroute shipments on CSX's lines to rail
16 lines owned and operated by another carrier?

17 A. No.

18 Q. Does the computer model program
19 determine efficiency in the routing?

20 A. It solves for the equation of the
21 lowest car miles and handlings.

22 Q. In reference to that equation, can you

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1 tell us what factors are considered in determining
2 the most efficient routing?

3 A. It goes through iteratively and looks
4 at every available route and calculates those for
5 each of those routes. So it is literally hundreds
6 and thousands of potential routes. All of that is
7 calculated, and then the most efficient, you know,
8 routing is the one that is produced.

9 Q. And what makes it the most efficient?

10 A. Minimizing our handlings and miles.

11 Q. And those are the two factors --

12 A. Yes.

13 Q. -- constants factors in determining
14 what is efficient?

15 A. Correct.

16 Q. Thank you.

17 Do the computer models incorporate
18 information about rail lines that are not operated
19 or owned by CSX?

20 A. No.

21 Q. Do they model rerouting over the
22 Norfolk Southern rail lines?

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1 A. No.

2 Q. Are they capable of modeling rerouting
3 over the Norfolk Southern rail lines?

4 A. With a large amount of programming, it
5 is capable. I don't know if it is feasible,
6 because I don't know that the NS would release any
7 of that data. We wouldn't release our data to
8 some other railroads because it is integral to
9 what our efficiency is. So it is a rare
10 circumstance this kind of data would be shared.

11 Q. It is what keeps you competitive?

12 A. Yes.

13 Q. With the computer models, do you ever
14 use them to request a rerouting over any other
15 rail carrier?

16 A. We have not, no.

17 Q. No?

18 A. Not in my experience.

19 Q. Do the computer models take into
20 account safety? And by that I mean the safety of
21 using one route as opposed to another route for a
22 certain shipment.

1 A. They do not.

2 Q. Is there a reason for that?

3 A. Well, all of our lines are operated in
4 a safe manner. They were inspected by the FRA.
5 The inherent safety, so to speak, of all of the
6 lines is similar. But the speed or the velocity
7 of that line, the operating rules, dictate given
8 certain track structure and conditions that some
9 routes are slower than other routes, but they are
10 safe at that speed.

11 Q. Do you know of any model that uses
12 safety as any sort of measurement or you can't do
13 it based on the answer you just gave me?

14 A. I am not aware of that, no.

15 Q. Are you aware of any computer model
16 program that has been used or could be used by
17 any other entity with authority over or input
18 into CSX's routing decisions?

19 MR. NATHAN: I object to the question,
20 and it assumes facts not in evidence.

21 BY MS. MULLEN:

22 Q. Do you understand the question? For

1 example, the FRA, TSA or the STB, that takes into
2 account the safety of using one route as opposed
3 to another?

4 MR. NATHAN: You are asking his
5 knowledge of the computer program as to Federal
6 agencies? Is that what you are saying?

7 MS. MULLEN: I am asking if he has any
8 knowledge of any other entity with authority over
9 or input into the CSX routing decisions.

10 THE WITNESS: Over the input in our
11 rerouting? If I understand the question, no.

12 BY MS. MULLEN:

13 Q. The computer models that are used, are
14 they pretty standard throughout the industry or
15 are they unique to a particular company, if you
16 know?

17 A. They are uniquely designed to each
18 company. This particular software company is in
19 use in some of the large railroads, but not all.

20 Q. Are you familiar with Norfolk

21 Southern's computer models?

22 A. Only generally.

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1 MS. MULLEN: Could we take five
2 minutes.

3 (Recess.)

4 (The reporter read a requested portion
5 of the record.)

6 MS. MULLEN: Back on the record.

7 BY MS. MULLEN:

8 Q. Did you want to clarify a question or
9 did we take care of that?

10 MR. NATHAN: Let's clarify. Let the
11 witness clarify a previous answer.

12 THE WITNESS: Right. The way I
13 understood your question that we were just talking
14 about was, did any Federal agency actually have
15 physical input, either by computer or by directing
16 us to apply safety in our routing decisions, and
17 that answer is no.

18 But I think the question that you might
19 have been asking was, do we take into account the
20 advice or directives of agencies who have
21 authority over railroad operations like Homeland
22 Security, TSA, FRA, STB, and those kinds of

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1 agencies, and the answer to that is yes, we do.

2 They don't -- I am not aware of any
3 time when they have told us to choose a particular
4 route over a different route, but, for instance,
5 the Super Bowl in Jacksonville, the Olympics in
6 Atlanta several years ago, you know, we were in
7 consultation with some of those agencies working
8 to change our operating plan so that we would
9 address their risk concerns and, you know, deal
10 with those kinds of issues.

11 So routinely things like that come up,
12 and especially since 9/11. And we do work with
13 those agencies and will adjust our operating plan
14 to accommodate those kinds of inputs.

15 BY MS. MULLEN:

16 Q. And the risk concern, is that probably
17 identified as against a terrorist attack?

18 A. Well, again, I don't generally have a

19 need to know. I am not familiar with what the
20 specific risk was, but certainly large sporting
21 events where we routinely operate trains through
22 are something we deal with fairly often. I don't

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1 deal with the risk side of it. I just deal with
2 the implementations of it.
3 Q. Right. And I understand that you don't
4 have the particulars. But what I am trying to
5 find out is, is it your understanding that the
6 concern that has been expressed by the agencies
7 that you just identified and the rerouting that
8 has taken place, that it is in response to a
9 threat by terrorists, in response to a possibility
10 of a terrorist attack?

11 MS. SPRAGUE: If you have an
12 understanding.

13 THE WITNESS: Sometimes I get that
14 understanding. Sometimes I don't. We don't need
15 to question what the threat is. So our effort is
16 to come up with the best available plan to
17 address the desired outcome. And so that's the
18 way we do it.

19 BY MS. MULLEN:

20 Q. Well, does your computer model analyze
21 or in any way take account of the different likely
22 effects of a terrorist attack on different kinds

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1 of materials?

2 In other words, there are explosives,
3 and does your computer model analyze what the
4 results might be if there was an explosion?

5 A. No.

6 Q. Do you have an internal system for
7 identifying particular HAZMAT materials, hazardous
8 materials? Internally do you have a
9 classification for them?

10 A. The STCC codes that we have talked
11 about are the primary way of identifying all
12 commodities that move on the railroad.

13 Q. And that's normal. It is done
14 throughout the industry?

15 A. Yes.

16 Q. Are you aware of a recommendation by

17 the Centers for Disease Control and the Agency for
18 Toxic Substances and the Disease Registry in the
19 United States Department of Health that train
20 companies should route hazardous materials away
21 from densely populated areas when feasible?
22 A. No.

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1 Q. Even though you are unaware that this
2 is a recommendation by those agencies, is this a
3 practice by the railroad industry nonetheless?

4 A. It is not in our company. I don't
5 think so in the industry.

6 Q. So population density is not a factor,
7 a safety factor, when you are transporting
8 hazardous materials?

9 MS. SPRAGUE: I object. Is that part
10 of what the Federal regulations require them to
11 take into account? Is that the question?

12 MS. MULLEN: No. I am asking in their
13 practices if in transporting hazardous materials
14 population is in any areas ever a consideration, a
15 safety concern, regardless of any sort of Federal
16 regulations.

17 MS. SPRAGUE: Whether or not there is a
18 concern, do they use that to route freight,
19 population density?

20 THE WITNESS: That's what I am trying
21 to understand. You mean in terms of our routing
22 decisions?

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1 BY MS. MULLEN:

2 Q. Yes.

3 A. No.

4 Q. What was the primary reason you
5 voluntarily rerouted hazardous materials --

6 MS. SPRAGUE: Objection. He said he
7 doesn't know.

8 MR. NATHAN: It has been asked and
9 answered.

10 MS. MULLEN: You can answer. Their
11 objections are noted, but you can answer.

12 THE WITNESS: I had a conversation from
13 my superior at the company stating that we should
14 effect a plan to reroute those materials. We did

15 that. We came up with a plan and implemented it,
16 and that's all I know about it. I was told that
17 there was a credible threat that required that
18 move, but no specifics as to what the threat was.

19 BY MS. MULLEN:

20 Q. Credible threat meaning a terrorist
21 attack threat?

22 A. I didn't ask and I was not told.

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1 Q. Who was the supervisor who gave you
2 this directive?

3 A. Alan Blumenfeld.

4 Q. And the extent of your conversation
5 with, is it, Mr. Blumenfeld --

6 A. Yes.

7 Q. -- was that there was a credible risk
8 of attack and that these materials needed to be
9 rerouted?

10 MR. NATHAN: I object. That is not a
11 correct characterization of his testimony.

12 MS. MULLEN: It is a question. If
13 that is fair, tell me if it is fair. If it is
14 not fair, correct the record.

15 THE WITNESS: Well, no, that's not the
16 conversation.

17 BY MS. MULLEN:

18 Q. Could you please tell us the extent of
19 the conversation that you had regarding the
20 credible threat of attack.

21 MR. NATHAN: You keep putting in
22 "threat of attack." If you ask him what is the

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1 conversation, there would be no objection. But
2 you continue to do that, and then you continue to
3 mischaracterize the prior testimony in this
4 question. Why don't you ask him what was the
5 conversation. Then we will all know.

6 BY MS. MULLEN:

7 Q. Why don't you answer that question.

8 A. The conversation, as best I recall, was
9 that there was a credible threat. There was no
10 characterization of what kind of threat it was, I
11 mean, if that's the issue of the discussion. And
12 that we should go forward with a plan to eliminate

13 the four STCC codes that we have identified from
14 using the Virginia Avenue tunnel.

15 Q. When you say "credible threat," a
16 credible threat of what, sir?

17 MS. SPRAGUE: Objection.

18 THE WITNESS: I wasn't told.

19 MS. SPRAGUE: He doesn't know.

20 THE WITNESS: I wasn't told and I
21 didn't ask.

22 BY MS. MULLEN:

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1 Q. Just there was a credible threat of
2 some kind?

3 A. Right.

4 Q. And that was the extent of your
5 conversation with him regarding the rerouting?

6 A. Right.

7 Q. Was 9/11 mentioned in this
8 conversation?

9 A. No.

10 Q. Did you have more than one conversation
11 with Mr. Blumenfeld regarding this matter?

12 A. I believe there was a report when we
13 had concluded the reroute work that we were done,
14 and that we were beginning implementation.

15 Q. That was a report?

16 A. Verbal report that we are ready to
17 begin implementation of the reroute.

18 Q. Do you recall the substance of that
19 verbal report?

20 A. There was a sentence about that long,
21 along with reports of other activities we were
22 doing.

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1 Q. Can you tag that with a date?

2 A. It was in the April time frame, early
3 April, I think. But I am not 100 percent sure.

4 Q. And implementation began in May?

5 A. Well, as we, I think, tried to describe
6 in the affidavit, you can't just turn switches and
7 make this happen. It is a flow. So the diversion
8 of the flow, even once you send the instructions,
9 takes quite a bit of time. So the diversion was
10 effective beginning of May.

11 Q. And how long has the diversion taken in
12 this particular case?

13 A. I have no knowledge.

14 MS. SPRAGUE: How long did it take to
15 divert the traffic?

16 MS. MULLEN: To implement the plan. I
17 realize it is ongoing.

18 THE WITNESS: Three or four weeks from
19 the time we sent the instructions to the time we
20 believe that it was effective. Is that the
21 question?

22 MS. MULLEN: Yes.

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1 THE WITNESS: Three to four weeks.

2 BY MS. MULLEN:

3 Q. Assuming for the moment that the
4 legislation that is being challenged is passed,
5 what, if anything, will you have to do differently
6 than you are doing now regarding the voluntary
7 rerouting?

8 MR. NATHAN: Assuming it becomes
9 effective?

10 MS. MULLEN: Yes.

11 THE WITNESS: We would essentially
12 rework the same steps for the different flows and
13 the different routes. So, again, you basically
14 have a 3800 STCC code by 330 yard matrix for the
15 empty moves on the I-95 corridor, the loaded
16 moves on the east-west corridor, and the empty
17 moves on the east-west corridor, and those
18 instructions would have to be bar coded, so to
19 speak, because they are exceptions to the
20 operating plan.

21 The computer, again, is constantly
22 creating a trip plan for each car, and it would

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1 have to, in essence, manually extract all of that
2 from the normal flow, and then you would have to
3 allow the stuff that is in transit to thin out and
4 go away from those routes over that three-to-four
5 week period.

6 BY MS. MULLEN:

7 Q. Can you break that process down and
8 tell us specifically how that varies from what you

9 are currently doing, if it does?
10 A. It is the same basic process applied
11 against different commodities and loads and
12 empties and line segments.
13 So it is, in essence, a repeat of what
14 we have done, but for the new commodities above
15 the voluntary ones on the loaded side, go against
16 all of the empties on the north-south line, and
17 then both loads and empties and the new geography
18 of the B&O line.
19 Q. The 10 cars that you referenced
20 earlier in your testimony that have been rerouted
21 since May --
22 MS. SPRAGUE: They were not rerouted

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1 since May.
2 BY MS. MULLEN:
3 Q. Those are the 10 cars not rerouted
4 since May?
5 A. That's correct.
6 Q. They contained hazardous materials or
7 they were empty?
8 A. I don't have the breakout as to
9 whether they were full or empty. I just know
10 they moved over the line segment. But I could
11 get that answer. I think those are loads. Those
12 are the loads.
13 (Witness and counsel conferring.)
14 THE WITNESS: And you understand
15 that's the difference between the voluntary and
16 the materials covered in the act.
17 BY MS. MULLEN:
18 Q. Yes, but go ahead and put that on the
19 record. Explain what you are telling me.
20 A. That since May, when we had an
21 effective reroute of the voluntary reroute, there
22 have been approximately 10 loaded cars of

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1 materials covered by the D.C. Act that were not
2 covered by the voluntary.
3 So there were no -- to put it another
4 way, there were no cars, loaded cars of the
5 voluntary reroute that slipped through, if you
6 want to look at it that way.

7 (Witness and counsel conferring.)
8 THE WITNESS: Well, the four STCC
9 codes were chlorine and forms of propane. Those
10 are the ones that we voluntarily rerouted.
11 BY MS. MULLEN:
12 Q. Your affidavit doesn't deal with
13 materials other than chlorine or the propane, does
14 it?
15 A. It does with respect to the reroute.
16 This applies against the materials in the act
17 (indicating).
18 Q. Have you used the computer model to
19 determine the alleged effects of the rerouting
20 required by the D.C. Act?
21 A. Yes. That's this table (indicating)
22 and what is in the testimony.

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1 MR. NATHAN: You mean Exhibit 2 and you
2 mean the affidavit?
3 THE WITNESS: Yes, that's right.
4 BY MS. MULLEN:
5 Q. Exhibit 2 is actually the extent of
6 your analysis. There are no other documents?
7 A. That's right. That's correct.
8 Q. Thank you.
9 Has this document been shared with a
10 Federal agency?
11 A. No, I don't think so. No.
12 Q. Is today the first time you are
13 producing it for anyone other than your company?
14 A. Yes.
15 Q. In using the computer to determine the
16 alleged effects of the rerouting required by the
17 D.C. Act, did you analyze the impact of rerouting
18 traffic from the CSX lines onto the Norfolk
19 Southern lines?
20 MS. SPRAGUE: Asked and answered.
21 MS. MULLEN: You can answer.
22 THE WITNESS: We did not.

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1 BY MS. MULLEN:
2 Q. Did you share any sort of analysis with
3 Norfolk Southern before they refused to agree to
4 the rerouting?

5 A. No.
6 MR. NATHAN: Can I have the question
7 and answer read back.
8 (The reporter read the requested
9 portion of the record.)
10 BY MS. MULLEN:
11 Q. Have you had any conversations with
12 members of the Norfolk Southern regarding this
13 particular issue?
14 A. No.
15 Q. Do you know of anyone in your company
16 who has?
17 A. Regarding this issue? No, I don't know
18 of a specific conversation between the two.
19 Q. Did you read Mr. Osborne's affidavit?
20 A. I don't recall it. I don't recall
21 which -- I read a lot of affidavits.
22 Q. Let me show it to you.

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1 A. I might have skimmed it.
2 MS. MULLEN: Does counsel need a copy?
3 MR. NATHAN: That's okay. If you have
4 a copy, that's fine.
5 BY MS. MULLEN:
6 Q. This is a declaration of Joseph C.
7 Osborne, Jr.
8 A. Okay.
9 MR. NATHAN: Was the question whether
10 he had seen this before?
11 MS. MULLEN: Yes. And I am giving him
12 a chance to read it.
13 MR. NATHAN: These have marginal notes
14 and underscores.
15 MS. MULLEN: We perhaps should check
16 this one.
17 MS. SPRAGUE: It is clean.
18 MS. MULLEN: Thank you.
19 BY MS. MULLEN:
20 Q. Have you seen that document before?
21 A. Actually I don't recall having read it
22 before.

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1 Q. So your answer is, you are certain you
2 have never seen this affidavit?

3 A. No. I know. I heard in discussions
4 that NSR had refused, but I did not see the
5 document itself.
6 Q. Do you know why they refused?
7 MR. NATHAN: I object to that
8 question. It would be without foundation on the
9 record. He said he didn't talk to anybody at the
10 company. He hasn't seen this affidavit before.
11 How would he know the answer to that?
12 MS. MULLEN: That's what I am trying
13 to find out. He may have other sources of
14 information other than what he has been presented
15 with today.
16 BY MS. MULLEN:
17 Q. Do you have any understanding of why
18 NSR has refused?
19 A. No.
20 Q. By that I mean, based on your
21 experience in the industry, you don't have an idea
22 as to why NSR would be reluctant to agree?

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1 MS. SPRAGUE: That's what he said.
2 MR. NATHAN: You are asking him to
3 speculate.
4 MS. MULLEN: I am not asking him to
5 speculate. He is a man who has great expertise in
6 the railroad industry. This is clearly something
7 that he can give a reasonable answer to based on
8 his business experience.
9 THE WITNESS: Okay. It would be well
10 outside standard practice to do this. It would
11 require the mutual consent of not only CSX and
12 Norfolk Southern but also the customer and CSX and
13 the customer and Norfolk Southern, and the
14 customer would be required to add Norfolk and
15 Southern to the route, so to speak.
16 We are a common carrier. We follow
17 the instructions of the customer when they give
18 us the commodity to move. And so they will
19 instruct us to take it on our railroad from
20 origin to destination or from interchange with
21 another railroad to destination or from us to
22 interchange with another railroad.

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1 We have no ability contractually or
2 otherwise to simply hand that traffic off to the
3 NS nor do they have the ability to simply accept
4 it. There has to be concurrence all the way
5 around.

6 BY MS. MULLEN:

7 Q. You described it as "outside standard
8 practice." Why is it so unorthodox?

9 A. Again, you need the customer. We work
10 for the customer. And the customer makes these
11 basic decisions about whether he wants to use one
12 railroad, two railroads, five railroads in order
13 to get his commodity from one point to another.

14 Q. Why would the customer care if it gets
15 to its destination?

16 A. Two reasons. One is typically the more
17 railroads you have in the mix, the more it would
18 cost the customer. The second is to the extent
19 that it is inefficient in any way, the customer
20 then has, you know, both threats to his ability to
21 be able to understand the timing of the delivery
22 of the goods, because of the lengthened supply

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1 chain, and the interchanges that are required.

2 Also with that inefficiency they will
3 over time be required to supply more equipment
4 than they currently own because it will take
5 longer for every single piece of that equipment to
6 make a load and an empty.

7 Q. So you are essentially telling us, and
8 correct me if I am wrong, that the problem is that
9 it would be additional time and money for the
10 customers? That's a major factor?

11 A. That is something that is a requirement
12 in order to accomplish this. Another factor for
13 either NS taking the traffic or us taking traffic
14 from someone else would be what is the capacity
15 and what is the routing and handlings that would
16 be required on their network if they are taking
17 our traffic, on our network if we take theirs, and
18 is that business that supports our overall
19 objective of moving goods to customers in an
20 efficient way that allows us both to prosper.

21 Q. You said "over time" it would require
22 additional equipment. What period of time are you

1 thinking about when you say "over time"?

2 A. If you put additional days into every
3 car cycle, depending on how stretched the supply
4 line is, and how available the equipment is, it
5 could be instantly or it could be an investment
6 that is required within a year or so.

7 Q. In paragraph 22 of your affidavit have
8 you used an expert assessment method that you
9 describe in this paragraph to quantify the risk
10 of any sort of terrorist attack in the District
11 of Columbia?

12 A. No.

13 Q. So it would be fair to say that you
14 didn't reach any conclusions regarding such a
15 risk using the assessment methodology that is
16 referenced in paragraph 22?

17 A. As it relates to paragraph 22, that's
18 correct.

19 Q. Have you used the expert assessment
20 method that is described in paragraph 22 in
21 planning the voluntary rerouting of the CSX that
22 has occurred from the north-south line?

1 A. Yes.

2 Q. Did you analyze the safety and security
3 impacts of such rerouting before doing so?

4 A. No.

5 Q. In the assessment method that is
6 described in paragraph 22 of your affidavit, that
7 was used to determine the effects or the alleged
8 affects of the rerouting required by the D.C. Act,
9 did you analyze the impact of the rerouting
10 traffic from CSX's lines onto Norfolk Southern's
11 lines?

12 A. No.

13 MR. NATHAN: When you keep asking about
14 the rerouting of traffic on the Norfolk Southern
15 lines, are you referring to the tracks or trains
16 of Norfolk Southern, or do you know?

17 MS. MULLEN: We are referring to the
18 tracks.

19 MR. NATHAN: So it would be the CSX
20 trains running on Norfolk Southern tracks is what

21 you are talking about?
22 MS. MULLEN: Right.

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1 BY MS. MULLEN:
2 Q. Have you understood my questions in
3 that context?
4 A. Well, CSX trains as opposed to cars.
5 This computer model is used for the routing of the
6 cars that go onto trains. We did look at the
7 Norfolk Southern route that is available, and if
8 our trains were to go over it, I believe we have
9 an exhibit that shows that it is a further
10 distance and requires them to go through two of
11 their northern yards where they would have to be
12 classified and handled.
13 Q. Is there any other starting point you
14 could use that would reduce the mileage? In other
15 words, you took certain examples.
16 A. No. That's the shortest one we could
17 do through a map exercise. We don't have the NS
18 network in our system, so we couldn't do it
19 through a computer exercise.
20 So, for instance, if you went to
21 Atlanta instead of some other large intersection,
22 you can tell by the map that it is a longer

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1 distance on the reroute. But from a map exercise
2 that's the shortest route.
3 Q. Are you saying then that you selected
4 as an example one that would have the shortest
5 distance as opposed to one that would show the
6 greatest?
7 A. For that particular example in the
8 exhibit, yes.
9 Q. And that was done by -- that was a map
10 exercise, not done by computer?
11 A. That's right.
12 Q. Does CSX accept any loaded banned
13 material cars in the interline service?
14 A. Yes.
15 Q. And how do you ensure, and just
16 generally, that the cars haven't been tampered
17 with?
18 A. At an interchange or the next available

19 yard, there is a requirement by the FRA and in our
20 own safety manual to inspect the cars.
21 So, you know, before a train leaves
22 any yard, that train, all the cars in that train

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1 are inspected. And then there are mileage
2 requirements. After a car has traveled a certain
3 number of miles, it is required to be inspected
4 as well.
5 Q. But this is basically derived from
6 industry standards?
7 A. FRA standards as applied on CSX. Each
8 railroad has some latitude and creates their own
9 operating rule book.
10 Q. What is the average extra distance
11 that CSX would have to haul cars to comply with
12 the D.C. ban?
13 A. Approximately 7,000 into 2 million
14 miles.
15 Q. It is about two hundred miles, isn't
16 it, according to your calculations?
17 MR. NATHAN: Where do you get that
18 from?
19 THE WITNESS: The number is derivable
20 from the two million additional miles and the
21 6,939 cars.
22 MS. SPRAGUE: You are just looking at

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1 loads?
2 THE WITNESS: For loads, yes. You are
3 right. So it would be 11,000 into 2 million for
4 loads and empties.
5 BY MS. MULLEN:
6 Q. You are saying "right" as to what.
7 A. Mary Gay made the comment I had only
8 looked at only the loaded car count. You should
9 look at the loaded and empty car count.
10 That would be 11,400 cars going in
11 terms of additional miles, 2,036,514 additional
12 miles. So if you divide 11,400 into 2,036,514 you
13 would have the additional miles required on
14 average per car.
15 Q. Which comes out to be?
16 A. Well, by my math that would be

17 slightly less than 200.
18 Q. That's 200 miles?
19 A. Yes.
20 Q. If rerouting of the banned materials
21 increases your company's costs, what would be
22 preventing you from increasing the rates to

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1 shippers to cover the costs?
2 A. The marketplace and other factors.
3 Q. Have you done any sort of study to come
4 up with a figure as to how much you would have to
5 increase your rates to shippers?
6 A. No.
7 Q. The number of cars that we are talking
8 about is a pretty small fraction of your overall
9 traffic, is it not?
10 A. Statistically, yes.
11 Q. So based on the statistics that you
12 currently have -- I don't know if this is your
13 area -- can you come up with a ballpark figure as
14 to what the cost would be to the shippers, to your
15 customers?
16 A. That's a sales and marketing specialty
17 and expertise. I have none of that.
18 Q. And I believe you testified earlier
19 today that a cost analysis has not been done by
20 your company.
21 A. That's right.
22 Q. Is one planned?

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1 A. Not to my knowledge.
2 Q. Did you coordinate your evaluation of
3 the operational impacts of the act -- by that I am
4 talking about the District of Columbia Terrorist
5 Prevention and Hazardous Materials Transportation
6 Emergency Act of 2005, so we have that on the
7 record, and that's what I am referring to when I
8 say the act.
9 A. Me, too.
10 Q. We are on the same page.
11 -- with the Department of Homeland
12 Security?
13 MS. SPRAGUE: What was the question?
14 THE WITNESS: Try that again. I got

15 lost in the words.
16 BY MS. MULLEN:
17 Q. I understand.
18 Did you coordinate your evaluation of
19 the operational impact of the D.C. Act with the
20 Department of Homeland Security?
21 A. I did not. I don't know of any
22 coordination with them.

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1 Q. You are unaware that anybody at your
2 company did any coordination with the Department
3 of Homeland Security?
4 MS. SPRAGUE: Regarding the impact,
5 Exhibit 2?
6 MS. MULLEN: Yes.
7 THE WITNESS: This is the first time
8 we shared this outside the company.
9 BY MS. MULLEN:
10 Q. Is there a reason why you didn't
11 coordinate this with the Department of Homeland
12 Security?
13 MS. SPRAGUE: Foundation. Why would
14 they?
15 THE WITNESS: Again, my mission was on
16 the implementation. It is not a requirement of
17 implementation.
18 BY MS. MULLEN:
19 Q. Do you have any agreements with the
20 Department of Homeland Security regarding
21 rerouting?
22 A. Not that I am aware of. You mean like

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1 a written agreement? No, I don't know of any,
2 verbal or written.
3 MS. SPRAGUE: But you aren't involved
4 in any potential consultations?
5 THE WITNESS: No. I'm not.
6 BY MS. MULLEN:
7 Q. In your affidavit you make several
8 references to the safety record of your company.
9 Is it your understanding that the act
10 is directed towards accidental releases of banned
11 materials?
12 A. I don't know why the act was passed.

13 Q. You don't?

14 A. No.

15 Q. Let's look at paragraph 17. In
16 paragraph 17 of your affidavit you make a point
17 that unlike highways "railroads seldom have bypass
18 routes that enable them to route traffic around
19 metropolitan areas."

20 But railroads, do they not, routinely
21 exchange traffic with other railroads, and by this
22 means can send traffic on different routes?

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1 MS. SPRAGUE: I object. I think you
2 are mixing apples and oranges.

3 MS. MULLEN: I think that's an
4 objection to form.

5 But if you understand the question,
6 please answer it.

7 THE WITNESS: We interchange traffic
8 with other railroads in carrying out our common
9 carrier obligations.

10 BY MS. MULLEN:

11 Q. With the interchange of traffic, what
12 is a railroad's ability to do this? Just give me
13 a thumbnail sketch as to how the interchange
14 practice operates.

15 A. We have designated locations that are
16 interchange locations between us and other
17 railroads. The interchange that occurs is a
18 way -- there are basically two kinds of
19 interchange: a physical interchange, and there is
20 kind of a billing interchange.

21 We always try to have those as close
22 together as possible. But, for instance, you can

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1 place a car on an interchange track. It will have
2 been physically interchanged even though the other
3 railroad hasn't come and actually attached to that
4 car. For billing purposes that may or may not be
5 at that location in time.

6 The interchange triggers changes in
7 the cost of the rent of the car, and it generally
8 results in the end of one carrier's billing and
9 the beginning of another carrier's billing.

10 Q. Is it a fair statement, then, to say

11 that your company does this routinely?
12 A. Yes.
13 Q. It is done every day?
14 A. Yes.
15 Q. If it is done routinely, why is the
16 interchange in traffic with Norfolk Southern so
17 problematic for you?
18 A. It is done routinely as we carry out
19 our common carrier obligation, which is serve the
20 customer the way the customer said he wanted his
21 traffic routed. In essence, CSX cannot simply
22 interchange traffic with another without that

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1 customer's directive.
2 Q. Has there been an assessment of your
3 customers as to their opinion about what this
4 change would be?
5 A. Not that I am aware of.
6 Q. So you don't know if the act were
7 effective that this would in any way result in
8 customer dissatisfaction?
9 A. We have the letters of some customers
10 who are concerned about it within the exhibits
11 that are filed, if I remember right. But an
12 analysis -- I am not aware of an analysis of
13 that.
14 Q. What is the gist of the complaint with
15 the customers?
16 A. The inefficiency, the time in transit.
17 Q. Is it fair to say time and money? Is
18 that what it boils down to, time and then money
19 for the customer?
20 A. I believe one or two of them talk about
21 safety as well. I would say those three things,
22 yes.

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1 Q. If the regulations in the act were to
2 allow for a permit, in other words, for the
3 empties, in other words, they would have to be
4 identified, but they don't have to be rerouted,
5 does that make things easier for your company or
6 not?
7 A. It reduces the impact of the reroute.
8 Q. And what is sort of the extent of that

9 impact?

10 A. Again, it is in the table.

11 Q. And why don't you point that out to us.

12 A. The empty additional miles are about
13 half of the 2 million. It is 947,712 additional
14 empty miles that are required to comply with the
15 act out of a total additional annual miles of
16 2,036,514.

17 Q. So that is essentially 50 percent?

18 A. Slightly less, yes.

19 Q. And based on that, the number of car
20 miles would total what? 2000 for the year 2004?

21 A. Yes, October of 2003, 12 months, it is
22 October of 2004. We have said in '04 because that

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1 12 months would give you seasonality. It will be
2 approximately that, but we don't have November and
3 December actual data at this point.

4 Q. Let's look at paragraph 23 of your
5 affidavit. You state that "The longer the route,
6 the greater the risk of a release while in
7 transit."

8 Why is that?

9 A. The statistics of handling a car safely
10 from origin to destination for these kinds of
11 products is quite high. But every additional mile
12 adds inherent risk and especially additional
13 handling adds inherent risk.

14 Basically a handling requires you to
15 change the car out from one train, place it
16 someplace, so you are uncoupling from the train on
17 both ends for HAZMAT materials. You are coupling
18 it to a locomotive. You are removing, placing it
19 again and recoupling it to another train.

20 Q. So intuitively the risk would
21 increase. Do you have data to back this up as
22 well?

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1 A. I think it is common sense.

2 Q. Right. Intuitively you would think
3 this would be the case. But I am just wondering
4 if you have hard data to back that up.

5 A. I have not done a statistical analysis
6 of incidents per mile handled.

7 Q. And the length of a route doesn't
8 correlate to the risk of, say, a terrorist
9 attack?
10 A. Why not?
11 Q. Well, how would it?
12 MS. SPRAGUE: I think this is getting
13 beyond -- have you done a study of this?
14 THE WITNESS: We have not. I don't
15 know.
16 BY MS. MULLEN:
17 Q. So your answer is you don't know --
18 A. I don't know.
19 Q. -- if the length would have an impact
20 or be a factor in a circumstance where you have a
21 terrorist attack?
22 A. I have no concept of how to evaluate a

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1 terrorist attack risk.
2 Q. How does the length of a route affect
3 the probability of a nonaccidental release?
4 MS. SPRAGUE: Are we back to terrorist
5 attacks? I think there was something else.
6 MR. NATHAN: Nonaccidental release.
7 MS. SPRAGUE: You mean a purposeful
8 release?
9 MS. MULLEN: A nonaccidental release.
10 Something intentional.
11 THE WITNESS: I have no idea. Common
12 sense says there is more opportunity.
13 BY MS. MULLEN:
14 Q. Are you aware of any provisions of the
15 Federal regulations that cover railroads, how they
16 in any way minimize the risk of nonaccidental
17 releases of hazardous materials?
18 A. Only generally. We have dealt in my
19 group with Homeland Security and TSA in passenger
20 operations, so there are, you know, drills,
21 training, pamphlets, materials on the computer,
22 materials in posters, and direct communication,

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1 you know, on that subject generally and as it
2 relates to the passenger operations. So I know
3 the level of activity we have of that.
4 Q. Do you know of any specific regulation

5 that is applicable to railroads that deals
6 directly with nonaccidental releases?
7 MS. SPRAGUE: I object. I think this
8 is not -- John can explain if this is his area of
9 responsibility within the company. But I don't
10 believe that it is. Other people are responsible
11 for that.
12 MS. MULLEN: That may be, and he can
13 certainly tell me so, if he doesn't have a
14 knowledge base for a particular question.
15 THE WITNESS: I don't.
16 BY MS. MULLEN:
17 Q. You don't?
18 A. I do not.
19 Q. Thank you.
20 In paragraph 25, you state that the
21 dwell time in yards would increase risk. Again,
22 intuitively one might think that to be the case,

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1 but do you have hard data that supports that
2 assertion?
3 A. In terms of accidental releases, they
4 are far more frequent in yards than in transit
5 between yards.
6 Q. How do you know that?
7 A. We do have data on our incidents.
8 Q. Can you provide that data?
9 MS. SPRAGUE: I believe that these
10 are matters the United States has spoken to, and
11 this information is available, I think, from
12 FRA. It is at the level of common knowledge in
13 the industry.
14 MS. MULLEN: So the data would be
15 available to anyone?
16 MS. SPRAGUE: Yes, I believe the
17 Department of Transportation keeps all these
18 statistics and this goes into their decision of
19 regulating, a very integral part of what they
20 do.
21 MS. MULLEN: Thank you.
22 BY MS. MULLEN:

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1 Q. When was the last time that you
2 looked at data that referenced the increased risk

3 as it relates to dwell time in yards?
4 A. Last year.
5 Q. And what was it that you looked at?
6 A. There is an AAR committee that has
7 dealt with specifically the safety in yards, and
8 they produced several reports, and I skimmed over
9 a couple of those reports early in the year last
10 year. I don't remember which month. I would say
11 in kind of around now, maybe February sort of time
12 frame. February, March time frame.
13 Q. Is the publication you are referencing
14 the Association of American Railroads "Railroad
15 Facts"?
16 A. No. We call it the SOFA report.
17 Q. SOFA?
18 A. S-O-F-A, and I don't recall what the
19 acronym stands for.
20 Q. Let's look at 29. What control does
21 your company have over the acceptance of rail cars
22 carrying hazardous materials when the rail cars

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1 are owned or leased by the shippers?
2 A. You mean -- what did you mean by
3 "acceptance"? I'm not sure what that means.
4 Q. Well --
5 A. You mean like an interchange?
6 Q. An interchange, agreeing to take it.
7 MS. SPRAGUE: She means picking it up
8 from the shipper.
9 THE WITNESS: From the shipper. Again,
10 it is subject to the same inspection that we
11 perform on all cars at various intervals through
12 its transit at various locations in the transit.
13 So the train crew will inspect it when they pick
14 it up. Before it is placed, before it moves again
15 on the outbound train from the local yard that the
16 crew took it back to, it will be inspected again.
17 That series of inspections will continue as the
18 train moves through the system.
19 BY MS. MULLEN:
20 Q. Would you tell us what your
21 understanding is of the common carrier obligation
22 to accept railworthy traffic, if there is such an

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1 obligation.

2 A. Well, my understanding is that a
3 shipper who has a valid movement record, which
4 could be under -- generally it is under a
5 waybill, is what we call them.

6 Q. Under a what?

7 A. Waybill. It could be subject to either
8 a contract or a tariff. I'm not expert in those,
9 in what governs those kinds of issues. But that
10 waybill prescribes what is to be moved and over
11 what route and what combination of routes, if that
12 is the case, and that is the record.

13 In essence, the company notifies us
14 that it has a completed waybill and a car ready to
15 move, and we pick it up and move it.

16 Q. If they meet industry standards, in
17 other words, it is safe --

18 MS. SPRAGUE: I would object, that the
19 standards come from the Federal Government and are
20 applied by the industry, but they are more than
21 industry standards. There is a whole book, the
22 Code of Federal Regulations, that governs the

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1 transport of hazardous materials.

2 MS. MULLEN: Yes, and we would imagine
3 the industry complies with the Federal
4 regulations.

5 THE WITNESS: Right.

6 BY MS. MULLEN:

7 Q. Why would you reject a car,
8 transporting a particular car?

9 A. At the industry's location when we are
10 going to pick it up?

11 Q. Yes.

12 A. Either the waybill is incomplete or not
13 accurate or not understandable. Somehow it was
14 not ready to move from a billing standpoint, and
15 the visual inspection of the crew when they start
16 to effect the move, before they would couple to
17 the car, they would visually inspect the car.

18 Q. If they found it to be not safe?

19 A. If they found it to be leaking, you
20 know, that kind of thing, if they found it to have
21 a visible damage of some kind, then that would
22 typically lead to a rejection.

1 Q. Can you just briefly outline, if you
2 know, what the inspection entails before an
3 acceptance of a car carrying hazardous materials,
4 before it would be connected?

5 A. Again, it is described as to what
6 should be done. Generally you walk around the
7 entire car. You look for leaks. You look for
8 damage.

9 Q. And that inspection is defined by the
10 Federal regulations that govern the railroads?

11 A. It is defined both by those
12 regulations and by our company policies, which
13 implement those regs.

14 Q. Does your company go beyond what the
15 regulations require?

16 A. You would have to look at the specific
17 example that you are talking about. In many cases
18 we do, you know. In other words, the regulations,
19 a lot of FRA regulations, we go beyond, but I
20 can't say to all HAZMAT movements. I don't know
21 that we go beyond. I'm not that familiar with it.

22 Q. Let's look at paragraph 30. Your

1 affidavit explains that the act would have
2 serious, long-term impacts on your CSX network.

3 Could you explain the serious,
4 long-term impact, using the numbers that you are
5 talking about.

6 A. Okay.

7 Q. By that I mean you have 11,400 banned
8 materials cars in the operating environment.

9 A. Right. The first thing to understand
10 about our network, the CSX network, which is also
11 true for other large railroads in the country, is
12 that we are operating at very near capacity.

13 So capacity is a bit of an illusive
14 concept, but let's say the relationship between
15 delay in accomplishing the movement of a train or
16 cars to destination against the congestion that it
17 runs into is not a straight line. It is what we
18 call axiomatic.

19 As you become more congested, every
20 small event creates a disproportionate towards

21 exponential increase in the amount of delay that
22 is going to be incurred, not only for that

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1 particular movement, but all other movements that
2 are trying to work their way through that
3 congestion.

4 So even the increase in fairly small
5 statistical-wise numbers of cars or additional
6 handlings, and certainly 2 million car miles,
7 creates a clog to the flow that impacts well
8 beyond the immediate area of the reroute.

9 So, for instance, to give you an
10 example, in relation to the Washington area, we
11 have many examples over the last year in this area
12 of very small disruptions creating hours and hours
13 of unacceptable delay to commuter and passenger
14 trains.

15 So we have, you know, numerous
16 incidents where a train that simply has a mechanic
17 issue and stops on line of road for a period of
18 two to three hours creating a very large wave of
19 disruption through or ability to run the network
20 in just this part of the area.

21 When you have that kind of disruption
22 over a period of time and it continues, the

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1 effects of that disruption cascade to the rest of
2 the network very quickly, especially when you are
3 in times of tight capacity.

4 So it is the drag of the inefficiency
5 of the news, and certainly if we were not allowed
6 an orderly process of implementing the act, if it
7 were to take effect immediately or on the strike
8 of a judge's gavel, we would, in fact, severely
9 impact all of the passenger operations in the D.C.
10 area for days or weeks before that impact would be
11 unwound through the now less efficient network.

12 Q. What period of time were you
13 voluntarily rerouting?

14 A. From May to October.

15 MS. SPRAGUE: From May to October?

16 THE WITNESS: That's May until now.
17 We are still voluntary rerouting.

18 BY MS. MULLEN:

19 Q. The impact that you just described, has
20 that been your experience doing it voluntarily?

21 A. No. That's the problem with the
22 indirect costs. You can't go back to a specific

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1 car and say this car caused us to have congestion
2 at Cumberland Yard or at Acca Yard or farther down
3 the line. You just know that overall efficiency
4 has declined, and it is a contributing factor to
5 that.

6 Q. So is it a fair statement that since
7 you have been voluntarily rerouting the HAZMAT
8 cars it has had a serious impact on efficiency?

9 A. It is a contributing factor to a less
10 efficient operation. It has caused our operation
11 to be less efficient, I can tell you that.

12 The reason they are called indirect
13 costs is you can't readily measure back to a
14 specific reroute of a car. And the nature of
15 capacity is such that even if you could, and you
16 said this car going into that yard was the straw
17 that broke the camel's back, was it really the
18 fault of that car or other inefficiency that is
19 also being worked into the system. Is it the cars
20 that led up to that car or was it that car?
21 That's why you can't trace it back.

22 Q. If that is the case, why didn't you

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1 stop the practice?

2 A. I'm sorry.

3 Q. If it was causing your company to be
4 less efficient, why didn't you stop? Why would
5 you do it voluntarily if it had such a negative
6 impact on your company?

7 A. Again, we didn't do a specific cost
8 analysis of it. We did it for security reasons.

9 Q. And what are those security reasons?

10 MS. SPRAGUE: I object.

11 MR. NATHAN: Asked and answered.

12 MS. SPRAGUE: We have been through
13 this.

14 BY MS. MULLEN:

15 Q. You can still answer.

16 A. I was advised of a credible threat. I

17 was instructed to effect the change. I played a
18 part in the implementation of the change. I
19 don't have knowledge beyond that.

20 Q. Do you intend to continue to do the
21 rerouting voluntarily?

22 MR. NATHAN: "You" as the company?

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1 MS. MULLEN: The company, of course.

2 THE WITNESS: I have no knowledge of
3 duration, intended duration.

4 BY MS. MULLEN:

5 Q. Is it your understanding it is to
6 continue indefinitely?

7 MS. SPRAGUE: I object. He said he
8 has no knowledge of duration.

9 BY MS. MULLEN:

10 Q. Is that your understanding that it is
11 to go on indefinitely?

12 A. No one has asked me to reroute it back.

13 Q. So you have not been given any time in
14 which the rerouting should cease?

15 A. That's correct.

16 Q. Tell me if this is correct. You have
17 11,400 banned material cars in an operating
18 environment. You transport or your overall
19 traffic is like 7.4 million, right, carloads of
20 freight, and we are talking about 2000 in 2004?

21 A. Yes.

22 Q. And this is referenced in your

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1 affidavit at 18.

2 So assuming that you have -- and math
3 is not my strong suit -- assuming you got 6
4 million empties --

5 MS. SPRAGUE: Six million empties? I
6 don't understand.

7 BY MS. MULLEN:

8 Q. Out of that amount, all right, how many
9 empties would you have in that total amount of
10 carloads of freight in 2004? Can you answer that
11 question?

12 A. You want to rephrase that. 7.4 million?

13 Q. Look at paragraph 30.

14 A. You are talking about 69,000 carloads,

15 not 7.4 million. These are 69,000 of the -- the
16 69,000 cars relate to the commodities covered by
17 the D.C. Act, and it is loads only. So some
18 carloads sometimes can be reloaded, but
19 approximately that many empties would be
20 generated, probably slightly less than that number
21 of empties would be generated after having carried
22 the load.

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1 Q. When you refer to "that many empties,"
2 what amount of empties are you talking about?

3 A. In the 65,000, 68,000 car range.

4 Q. So what percentage is that of your
5 total annual number of cars?

6 MS. SPRAGUE: You know, we can get a
7 calculator, or you can make argument. I didn't
8 bring a calculator.

9 MS. MULLEN: I am not trying to test
10 your math.

11 THE WITNESS: Well, 69,000 cars against
12 7.4 million cars is the correct way to get the
13 percentage, if that's what you are looking for.

14 MS. MULLEN: I came out with .08
15 percent of your total number of cars handled.

16 MS. SPRAGUE: We can get a calculator,
17 and you can make whatever argument you want to
18 make from the numbers. But if we need Mr. Gibson
19 to agree, we need a calculator or time to do some
20 math.

21 MS. MULLEN: I am not trying to get
22 you to agree to a figure you have not calculated.

99

1 THE WITNESS: Well, 7.4 million are
2 loaded cars only and the 69,000 carloads are
3 loaded cars only. So those are apples and
4 apples.

5 BY MS. MULLEN:

6 Q. How many HAZMAT carloads did your
7 company handle in 2003, if you know?

8 A. Of the banned materials?

9 Q. Yes.

10 A. Either way, I don't know. I haven't
11 pulled those numbers. I wasn't listening to the
12 '03 part. Sorry.

13 Q. So the 11,400 carloads represents what
14 percentage of CSX's total carloads?

15 MS. SPRAGUE: You want to get paper
16 and pencil?

17 MR. NATHAN: This is not appropriate.
18 You can make the calculation. He has told you
19 what you would divide to come up with that
20 calculation.

21 MS. MULLEN: I am not trying to make
22 this difficult or put you through some sort of

100

1 math test. I am just trying to get a hold on the
2 figures, and I thought these might be percentages
3 that you had already calculated.

4 THE WITNESS: I haven't. It can be
5 done.

6 MS. MULLEN: It is a quarter to 1:00.
7 I probably have two hours left.

8 MR. NATHAN: Two hours.

9 MS. MULLEN: Shall we take just 30
10 minutes for a break. I think this is a good
11 breaking point.

12 MR. NATHAN: Let's take a 45-minute
13 break.

14 (Whereupon, at 12:40 p.m., a lunch
15 recess was taken, to reconvene at 1:25 p.m.)
16
17
18
19
20
21
22

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1 AFTERNOON SESSION
2 (1:40 p.m.)

3 MS. MULLEN: On the record.
4 Whereupon,

5 JOHN M. GIBSON, JR.
6 resumed the stand and, having been previously duly
7 sworn, was examined and testified further as
8 follows:

9 EXAMINATION BY COUNSEL
10 FOR THE DEFENDANTS (CONTINUED)

11 BY MS. MULLEN:
12 Q. Mr. Gibson, before we took a break for
13 lunch, I was asking you about, I believe, HAZMAT
14 carloads. I just want to make certain that I have
15 this straight.
16 That you have not done a calculation
17 as to the number of HAZMAT carloads that CSX
18 handled in 2003?
19 A. That's right.
20 Q. Have you done a calculation for 2004?
21 A. To develop these, the numbers that are
22 in here, we used the period of October 23rd --

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1 sorry -- October of 2003 to October of 2004.
2 Q. And that's captured in Exhibit 2?
3 A. Yes.
4 MS. SPRAGUE: I think we are talking
5 about two different times. You mean on their
6 system?
7 MS. MULLEN: Yes. This is specific
8 only to the District of Columbia.
9 MS. SPRAGUE: Right.
10 BY MS. MULLEN:
11 Q. So you are answering --
12 A. Right. October to October is what I
13 gave you for Exhibit 2. And, frankly, I don't
14 recall where the 2004 numbers came from. I
15 believe it is 12 months in 2004, January to
16 December. But I'm not 100 percent sure. I just
17 don't remember exactly the database we pulled
18 these from.
19 Q. But you think it was a calendar year?
20 (Witness and counsel conferring.)
21 THE WITNESS: That's what I was
22 assuming when I answered historically. But I just

103

1 don't recall. I believe that these data in this
2 exhibit and in the affidavit coincide, October to
3 October. But at this particular point I just
4 can't remember, I'm sorry, which of these.
5 MS. SPRAGUE: You are referring to
6 paragraph 19 in your affidavit?
7 BY MS. MULLEN:
8 Q. You are referring to paragraph number

9 19 in the affidavit that you prepared?
10 A. Right.
11 Q. Which corresponds with Exhibit 2?
12 MS. SPRAGUE: No.
13 THE WITNESS: No. I think they were
14 taken from the same database.
15 MS. MULLEN: That's what I mean.
16 THE WITNESS: Same October to October
17 database. I just am not 100 percent certain of
18 that. Thinking back on that, I can't recall it
19 was exactly that. I think that's what it is.
20 BY MS. MULLEN:
21 Q. You are telling us you believe it is
22 the same database information that is captured in

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1 Exhibit 2, but you can't be absolutely certain?
2 A. Yes. It was just a failure of memory.
3 I'm sorry.
4 Q. Let's look at Exhibit 2. You have
5 under annual shipments the Virginia Avenue tunnel
6 reroute only, right?
7 A. Yes.
8 Q. And that's east-west?
9 A. That's north-south. I-95 or
10 north-south.
11 Q. That's your north-south?
12 A. Yes.
13 Q. Then the column below that is the
14 east-west?
15 A. The row that says Virginia Avenue and
16 capital Metro sub-reroute is both the north-south
17 and east-west.
18 Q. It captures both?
19 A. Yes.
20 Q. It was east-west, north-south annual
21 shipments in the D.C. area?
22 A. That's correct. Of the commodities

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1 under the D.C. Act.
2 Q. And does the 6,939 represent the
3 annual shipments before voluntary rerouting?
4 A. Before voluntary, yes. In other
5 words, the Virginia Avenue reroute is a subset of
6 the 6,939. So the impact, so to speak, of adding

7 the east-west and the loads and the empties is
8 about, depending on which column you choose, five
9 to six times the impact of the voluntary reroute.

10 Q. Tell me if this is a correct
11 statement. That in 2004 the number of cars,
12 loaded cars that traveled through the District
13 was ten.

14 A. No. No.

15 Q. What do the ten cars that you
16 referenced earlier represent?

17 A. Ten cars that I referenced earlier
18 represent from the period of May of '04 to
19 January of '05 the number of loaded cars that
20 moved on the I-95 north-south route that were
21 subject to the D.C. HAZMAT law, but not covered
22 by our voluntary reroute.

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1 MS. SPRAGUE: But the law was not in
2 effect. Within the class of materials that were
3 in January incorporated in the act?

4 THE WITNESS: Right.

5 MS. MULLEN: Thank you for making that
6 clear.

7 BY MS. MULLEN:

8 Q. I know you described capacity, and I
9 know experts in your area describe capacity as
10 being something illusive, and somehow it is
11 difficult for the layman to understand.

12 But when you are talking about capacity
13 or at least in the way you have discussed capacity
14 today, I believe you would describe the capacity
15 of your company as being somewhat stressed?

16 A. Yes.

17 Q. Is that correct?

18 A. Not on every route. Not in every yard
19 location. But we are very near capacity in
20 several of our major routes and certainly very
21 near capacity everywhere in the Washington, D.C.
22 area.

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1 Q. And I don't know if this question makes
2 sense, but when you increase the number of your
3 carloads, you are increasing capacity, are you
4 not?

5 A. No.
6 Q. No. When you are increasing carloads,
7 what does that mean in terms of the industry?
8 That you have just expanded the number of cars so
9 you can carry more materials? That doesn't give
10 you greater capacity?

11 A. No.

12 MS. MULLEN: I think he is answering
13 the questions. You keep answering for him.

14 THE WITNESS: The cars are the demand
15 that is put against the capacity. The capacity
16 is relatively static or fixed. But it has got
17 many components, many variables that create your
18 kind of current capacity state.

19 The cars, additional cars, you know,
20 absent some capital investment, absent some change
21 in the operation to take other traffic off, the
22 addition of just cars to a static network is to

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1 decrease capacity.

2 BY MS. MULLEN:

3 Q. It is my understanding that the
4 industry sometimes gives awards for certain
5 railroads when they increase the number of
6 carloads. Is that correct?

7 A. I'm not familiar with that.

8 Q. Let's go to Exhibit 2. Does Exhibit 2
9 take into consideration -- that's your analysis.
10 Is this the only analysis that has been prepared?

11 A. That's right.

12 Q. Does that take into consideration the
13 added days, miles and the handlings on the CSX
14 system only?

15 A. Yes.

16 Q. So it doesn't give any attention to
17 the possibility of reducing route links through,
18 say, for example, interchange?

19 A. That's correct. But, again,
20 interchange of these commodities is not available.

21 Q. And why is that?

22 A. Well, I have been trying to describe on

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1 the interchange part it is that interchange is not
2 a voluntary exercise between CSX and NS, for

3 instance. We could not simply interchange these
4 cars to the Norfolk Southern.

5 The Norfolk Southern would have to
6 agree with us to want to take the traffic, and I
7 think they said they would not. And the customer
8 would have to agree both with us and with the
9 Norfolk Southern simultaneously that it wanted
10 that traffic to move that way, and we are
11 prohibited from simply dropping these cars on the
12 Norfolk Southern. That's not allowed.

13 Q. Let's say assuming for the movement
14 that Norfolk Southern would accept the cars. What
15 amount of time would it take to respond to its
16 rerouting? Let's say they would agree. The
17 implementation plan would take how much time?

18 A. About the same amount of time.

19 MR. NATHAN: You have ignored his
20 answer that the shippers have to request and
21 agree to that.

22 MS. MULLEN: I haven't ignored it. Do

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1 you have an objection?

2 MR. NATHAN: Yes, I do. You asked one
3 half of his answer. How could he answer that
4 question?

5 MS. MULLEN: Is your objection as to
6 time?

7 MR. NATHAN: You are mischaracterizing
8 his testimony.

9 BY MS. MULLEN:

10 Q. Did I mischaracterize your testimony?

11 A. I don't think I understand the
12 question then.

13 Q. How much time would it take to do an
14 implementation plan if, in fact, the Norfolk
15 Southern agreed and you don't have any dissent
16 from your customers?

17 A. And the customers insisted on it. The
18 customers have to direct it. They have to direct
19 us to do it. They have to direct the Norfolk
20 Southern to do it.

21 Is that the list of assumptions for
22 the question?

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1 Q. Yes. Assuming everyone is in
2 agreement.
3 A. It would take about the same amount of
4 time to do that as to do the reroute.
5 In other words, you would have to
6 change the routing of all of the cars that would
7 be involved across all of the yards they could
8 possibly hit.
9 Q. How much time is that? You say "the
10 same amount of time."
11 A. That three to four weeks.
12 Q. I believe you have referenced "least
13 disruptive alternative route" in your affidavit.
14 What do you mean when you are saying
15 "least disruptive alternative route"?
16 A. I don't recall exactly the sentence.
17 Do you recall where it is?
18 Q. I believe it is mentioned in several
19 paragraphs.
20 A. We talk about the efficient route.
21 Q. Then let's use "efficient" instead of
22 "least disruptive."

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1 A. The efficient route is the route that
2 minimizes the equations of car miles and car
3 handlings. Here we are in 31, it looks like.
4 Q. That's correct. It is in paragraph 31
5 where "least disruptive" is.
6 A. That's the same thing. Efficient.
7 Q. As efficient?
8 A. Yes.
9 Q. In doing your analysis, you limited
10 your analysis only to the CSX rail network. Is
11 that a correct statement?
12 A. Yes.
13 Q. But isn't it true that you do
14 interchanges with other railroads all the time?
15 A. Where we have agreements and where the
16 customers require it, we do that. An example is
17 from Los Angeles to New Jersey requires a
18 railroad that operates to Los Angeles and one
19 that operates to New Jersey. No one railroad
20 does both of those. An interchange is required.
21 It generally takes place in Chicago.
22 Q. The Norfolk Southern owns and utilizes

1 rail corridors, doesn't it, where banned materials
2 could be routed around the District?

3 MS. SPRAGUE: Objection. He said
4 legally they can't.

5 BY MS. MULLEN:

6 Q. Why do you say legally Norfolk Southern
7 doesn't own or utilize rail corridors where banned
8 materials can be routed around the District? On
9 what do you base that opinion?

10 A. CSX has a common carrier obligation to
11 deliver its traffic per its customer's
12 instructions. We have no instructions from any
13 customer to do that, and the Norfolk Southern has
14 indicated they would not do it either. So there
15 is no concurrence between us and the Norfolk
16 Southern. There is no concurrence between us and
17 the shipper. There is no concurrence between the
18 shipper and Norfolk Southern. So there is no
19 mechanism that allows, legal or otherwise, that
20 allows that to happen that I am aware of.

21 Q. And you seem to have misunderstood the
22 question because it was not what you would do. It

1 was a question about Norfolk Southern and the fact
2 that they own and utilize corridors where you
3 could have banned materials that could be routed
4 around the District of Columbia.

5 A. I think the question is if you look at
6 the Norfolk Southern -- the question, as I
7 understand it, is if you look at the Norfolk
8 Southern system map, you would see that their main
9 arterial route for north-south traffic does not
10 itself go through the District of Columbia.
11 That's accurate.

12 Q. Well, that's the conclusion we came to
13 when we looked at the map. So I wanted to make
14 sure that that was, in fact, the case.

15 A. The Norfolk Southern does operate
16 trains through the District of Columbia on CSX's
17 route per the agreements that are in the exhibits
18 that were delivered.

19 Q. Is there a particular reason why your
20 analysis doesn't include, say, a hypothetical

21 involving what could be done if you could utilize
22 Norfolk Southern's rail?

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1 MS. SPRAGUE: I object. There is an
2 attachment to his affidavit that shows -- it is
3 described in his affidavit, if you want to point
4 him to that paragraph. It is Exhibit G.

5 MS. MULLEN: I don't think I have that.

6 MS. SPRAGUE: These are his exhibits.
7 And it is paragraph 40.

8 MS. MULLEN: Yes, we have this. What
9 I am saying it is not included in your Exhibit 2
10 when you are describing the numbers.

11 THE WITNESS: No. I couldn't do that
12 analysis on this basis. It is not possible for
13 me to do that analysis using this methodology.

14 BY MS. MULLEN:

15 Q. There are too many unknowns?

16 A. We do not have the geography of the
17 Norfolk Southern in our data. This model was
18 built specifically to our railroad for our
19 proprietary purposes. It is unique to us and does
20 not include anybody else's railroad.

21 Q. Fair enough.

22 If you are operating at near or at

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1 capacity -- first of all, is that a correct
2 statement, that CSX is operating near or at
3 capacity as we speak today?

4 A. Again, it is line and facility
5 specific. Many of our routes are that way, and
6 in particular all of the routes in and around the
7 Washington, D.C. area can be described that way.

8 Q. Do you know of any existing plans to
9 deal with improving capacity for CSX that
10 currently exist?

11 A. Yes.

12 Q. And can you tell us what those plans
13 are?

14 A. In the D.C. area?

15 Q. Yes.

16 A. Or just generally?

17 Q. In the D.C. area.

18 A. We have agreements with the State of

19 Maryland and the State of Virginia to add capacity
20 in the form of sidings and crossovers in order to,
21 on the Maryland side, improve the reliability of
22 their commuter operation, on the Virginia side to

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1 improve reliability of their commuter operation
2 and over time add a small number of new passenger
3 trains.

4 Q. The crossovers, and I believe -- did
5 you say sidings?

6 A. Sidings, S-I-D-I-N-G-S.

7 Q. Would you please just define
8 crossovers and then sidings for us.

9 A. A siding is a parallel track to your
10 existing through track, your track that connects,
11 say, Richmond to Washington. A siding would be a
12 separate track parallel to that existing track
13 that would allow you to put a train into that
14 location to allow another train to pass.

15 And a crossover is where you have two
16 parallel tracks, a location where you can change
17 from one track to the other track, again in order
18 to facilitate meets and passes of other trains.

19 Q. What impact, if any, would the sidings
20 and crossovers that you just described have on
21 the passage of hazardous materials through the
22 District of Columbia?

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1 A. I have not done any modeling to
2 understand that. These were aimed at, again,
3 passenger reliability in the first part. And,
4 again, the reason that passenger service
5 reliability is such an issue is a further
6 indication of the congestion conditions of the
7 area.

8 The reliability is not where the
9 passenger agencies believe is acceptable, and they
10 are willing to present state and Federal funds to
11 try and improve the capacity so that their
12 operation will become more reliable.

13 It is just one of those indicators that
14 lets you know that we are at the edge of existing
15 capacity and straining with the network that we
16 run now.

17 Q. So would it be fair to say then that
18 right now it is unknown what impact those
19 agreements, the sidings and crossover agreements,
20 would have on the situation in D.C. and the
21 passage of hazardous materials?
22 A. That's accurate, yes.

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1 Q. Based on your experience, would those
2 sidings and crossover agreements minimize the
3 impact or be more likely than not to minimize the
4 impact?
5 MS. SPRAGUE: I think I object. The
6 agreements are to build the structure, so the
7 agreement is to build something. Is the question
8 then once it is built what effect it has?
9 MS. MULLEN: Sure.
10 Once they are up and running with that,
11 and we certainly don't know, that's what I am
12 trying to find out, if that would have any impact
13 on the situation in D.C. and the passage of
14 materials through the District? Would it
15 alleviate some congestion? Would it help? Would
16 it make the interchanges easier? That's what I am
17 trying to find out.
18 MR. NATHAN: What interchange?
19 MS. SPRAGUE: These questions, I am
20 afraid, don't make any sense.
21 MS. MULLEN: Then why don't you object
22 to form.

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1 MS. SPRAGUE: Object to form.
2 MS. MULLEN: He is the expert and he
3 can tell me if a question doesn't make any sense,
4 which I told him at the beginning, because we
5 don't have your expertise nor do we pretend to,
6 sir.
7 If a question is posed that doesn't
8 make sense, just say that really doesn't make
9 sense in the context of this situation. I can
10 use all the help that you can provide.
11 THE WITNESS: I certainly don't
12 understand the interchange piece, facilitate an
13 interchange. So that part of the question I
14 don't understand.

15 BY MS. MULLEN:

16 Q. Why doesn't that make sense? Just
17 tell me. I'm not embarrassed to not know this.
18 Tell me why it doesn't make sense.

19 A. We don't have an interchange.

20 Q. And that wouldn't help in terms of
21 creating any additional passages or ways to
22 transport?

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1 A. The States of Maryland and Virginia
2 believe that it will help the passenger operation
3 to make these investments, and to the extent that
4 helps the overall situation, there is some
5 positive impact.

6 I have no idea what impact that would
7 be. Certainly in my mind it does not minimize, I
8 think was the characterization you used -- would
9 that minimize the impact of the HAZMAT act? Not
10 in my experience, I don't think so.

11 Q. Thank you.

12 Is it correct that the voluntary
13 rerouting was not extended to the B&O line?

14 A. Yes, that's correct.

15 Q. And could you explain why?

16 A. No. I mean, again, we were part of the
17 implementation of the voluntary reroute. It
18 applied to specific understanding of a threat that
19 was based on consultation with the Federal
20 authorities. We weren't asked to implement
21 anything on the east-west line. I do not know if
22 there were any discussions about that.

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1 I think there is, though, within the
2 exhibits "Skip" Elliott's testimony at the
3 hearings in D.C., and they talked to our security
4 measures and what steps were taken and why.

5 Again, it all stems from a discussion
6 at the Federal level of what are the things we
7 should be protecting ourselves and the public
8 against.

9 Q. Let's turn to paragraph 55 of your
10 affidavit. In paragraph 55 you referenced
11 shifting transportation burdens to other
12 communities.

13 Could you please tell us what you mean
14 by that. Be specific as to what do you mean by
15 "transportation burden."

16 A. Right. Okay.

17 Perhaps the easiest way to describe
18 that is to simply look at a couple of the
19 exhibits where we show the reroute that occurs as
20 a result of the D.C. ordinance on specific
21 movements of certain commodities. So the first
22 of those maps is in Exhibit D.

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1 What would occur in this specific
2 movement that would normally come up through
3 Richmond and go towards Philadelphia is that this
4 traffic would be rerouted so that the cities of
5 Asheville, Cincinnati, Cleveland, Erie, Buffalo,
6 Rochester, Syracuse, Albany, all of northern New
7 Jersey places like Newark and Trenton, if you were
8 to draw a 2.2 mile corridor from that, you would
9 also include all of Manhattan and Philadelphia and
10 Baltimore -- not Baltimore -- but Philadelphia on
11 the north side as opposed to Philadelphia on the
12 south side.

13 Again, the inherent risk of additional
14 miles and handlings is transferred from the short
15 and direct route to a much more circuitous and
16 much lengthier route; and even though this is
17 handled very safely day in and day out, obviously
18 the more handlings, the more miles you put them
19 on, the more exposure everybody has.

20 Q. You talked about the burden, I guess,
21 on the northern New Jersey and New York City area,
22 in that metropolitan area, right?

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1 A. Yes.

2 Q. How many cars would have to be rerouted
3 there?

4 A. This is an example of one of the
5 reroutes that is created in this table. It is
6 described in the discussion.

7 Q. The number of cars?

8 A. The movement. The customer and origin
9 and destination.

10 Q. If this question makes sense, can you

11 tell me how many cars would have to be rerouted
12 there?

13 A. We did not sort the data that way.

14 Q. Do you know exactly where they would
15 run?

16 A. I do not. I believe that data may be
17 available. It is not the way we sorted it. We
18 did not look at this data by route it would take.

19 Q. Is there a reason why you didn't sort
20 the data by number of cars?

21 A. All we are concerned about is the
22 inherent inefficiency and that's described in the

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1 chart. There is no advantage from what we do to
2 look at where that inefficiency goes by car.

3 Q. So what can you glean from knowing the
4 number of cars? What does that tell you?

5 MS. SPRAGUE: The number of cars
6 subject to the reroute on Exhibit 2?

7 MS. MULLEN: Yes.

8 THE WITNESS: The purpose of Exhibit 2
9 is to analyze what is the impact of the act.

10 MS. MULLEN: Yes.

11 THE WITNESS: And the number of cars,
12 the extra miles and the extra handlings, that's
13 the essence of the impact. I don't know how to
14 get more elemental than that. That is what the
15 impact is.

16 BY MS. MULLEN:

17 Q. With me you should be as elementary as
18 possible. My question though is, I don't
19 understand why you wouldn't count the number of
20 cars in preparing the analysis. Why wouldn't you
21 sort the data as to the number of cars?

22 MR. NATHAN: You have the number of

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1 cars.

2 THE WITNESS: We have the number of
3 cars. What we didn't try to do is figure every
4 route every car would take discretely. The
5 computer does that. We don't need it.

6 BY MS. MULLEN:

7 Q. I was referring to the particular
8 number that would have to be rerouted to the area

9 that you were discussing, not the overall number
10 that is represented in Exhibit 2.

11 MS. SPRAGUE: Which area was he
12 discussing?

13 MS. MULLEN: He was discussing the
14 northern New Jersey and the New York City
15 metropolitan area. The question would be how
16 many cars would have to be rerouted there.

17 THE WITNESS: I don't know the answer
18 to that.

19 BY MS. MULLEN:

20 Q. I believe you testified you don't
21 know, that the data wasn't sorted?

22 A. That way. It was not sorted that way,

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1 that's right.

2 Q. And then my question was why not?

3 A. We didn't see it useful at the time we
4 were doing the analysis. It is not how we would
5 necessarily analyze our own movements of traffic.

6 Q. What value, if any, would there be in
7 knowing the number of cars that would have to be
8 rerouted there?

9 A. Into that particular area?

10 Q. Yes.

11 A. At some scale it may change the number
12 of trains that would be required.

13 Q. And is it correct you didn't do an
14 analysis about exactly where those particular cars
15 would run?

16 A. That's right.

17 Q. What value, if any, would there be in
18 knowing exactly where those cars would run?

19 MS. SPRAGUE: Asked and answered.

20 MS. MULLEN: No. It is a separate
21 question.

22 THE WITNESS: To the extent if it was

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1 30 cars a day that was being rerouted, mostly to
2 the same route, given the size of our trains, we
3 would have to add trains to various parts of the
4 network at certain locations in order to
5 accomplish that movement, again exacerbating the
6 congestion issues at both the yards and the lines

7 along the road. That is one piece of data you
8 might be able to use that for.

9 BY MS. MULLEN:

10 Q. But you are of the opinion that that
11 information, which wasn't sorted, is not
12 important in making an analysis as to the impact
13 of the act in the D.C. metropolitan area?

14 A. We didn't take it to that level of
15 detail, no.

16 Q. Would it be helpful to know those
17 figures?

18 A. We didn't think it would be when we
19 first looked at it.

20 Q. Right. But the question is, do you
21 think it would be helpful?

22 MS. SPRAGUE: For operational

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1 purposes? For your argument? I am not sure for
2 what.

3 MS. MULLEN: The question is to Mr.
4 Gibson and not counsel, and the question is
5 regarding the analytical value of the analysis
6 that was prepared and what was considered.

7 So I am asking him if there would be
8 some analytical value in knowing the number of
9 cars and where they would be rerouted. That's the
10 question. If he doesn't understand it, he can
11 certainly tell me that he doesn't.

12 THE WITNESS: Well, the analytical
13 value to CSX of the question of the D.C. HAZMAT
14 ordinance did not take us from a resource in time
15 standpoint to the level of trying to figure out
16 exactly which trains and whether those trains
17 have room for the commodities these particular
18 reroutes would occur on.

19 As to whether that adds value, it could
20 add value in limited circumstances where we are
21 dealing with something that is not so
22 hypothetical. This is hypothetical and we are not

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1 changing -- it goes along with not doing the
2 specific cost study. This was the level that we
3 felt was the appropriate use of our resources, to
4 gather the real understanding of the impact.

5 And I think the impact is pretty easily
6 explained this way. It gets more difficult to
7 explain with more detail, frankly.
8 BY MS. MULLEN:
9 Q. Have you ever used Norfolk Southern?
10 A. As in?
11 Q. Since the spring of 2004 in voluntary
12 rerouting?
13 A. No.
14 Q. Are you familiar with a United States
15 Department of Transportation report entitled
16 "Evaluation of Semi-Empirical Analysis For
17 Railroad Tank Car Puncture Velocity"?
18 A. No. Again, I believe "Skip" Elliott,
19 he is our company expert.
20 Q. Do you know how CSX is insured in case
21 of a catastrophic incident on its tracks?
22 MR. NATHAN: I am going to object to

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1 that question as being outside the parameters of
2 this deposition, which is to be limited to the
3 affidavit, which doesn't talk about insurance and
4 could not presumably be relevant in this case.
5 I am going to let him answer but not
6 much beyond the scope of the affidavit, and your
7 question is about the Norfolk Southern. That's
8 what we were told this deposition was about.
9 You may answer, if you know.
10 THE WITNESS: The familiarity of the
11 insurance I have relates to our passenger
12 operations. So there is, you know, familiarity
13 with our base coverages, but not with respect to
14 HAZMATs themselves or those kinds of incidents.
15 BY MS. MULLEN:
16 Q. So you would know the limits of your
17 liability in a general insurance policy, but you
18 would not know of any specific coverage for
19 catastrophic incidents?
20 MR. NATHAN: That's what he said. He
21 is talking about passengers. He said he didn't
22 know about hazardous materials insurance. Isn't

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1 that what he said? Why do you restate it in a
2 completely incorrect way?

3 MS. MULLEN: I am not doing it
4 intentionally, sir.
5 MR. NATHAN: I appreciate it.
6 MS. MULLEN: That's why we ask the
7 questions, so he can tell me whether we properly
8 stated his answer or not.
9 I am going to take two minutes.
10 (Recess.)
11 MS. MULLEN: Back on the record.
12 BY MS. MULLEN:
13 Q. Mr. Gibson, how many interchange points
14 does CSX have with Norfolk Southern?
15 A. I can't give you an exact number off
16 the top of my head, but it is in the range of 100.
17 Q. Is there any portion of Norfolk
18 Southern's rail system that CSX does not have
19 trackage rights to?
20 A. Most of it. There is hardly any
21 portion that we have trackage rights on.
22 Q. Can you identify those portions where

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1 trackage rights exist?
2 A. Not without a review of the records. I
3 mean of the agreements.
4 Q. What's your best estimate of the
5 number of agreements that you have with them
6 regarding trackage rights?
7 A. I haven't looked through that number,
8 but each of the interchange agreements would be
9 an individual -- each of the interchanges would
10 have an individual agreement.
11 MS. SPRAGUE: An interchange agreement
12 you are equating to a trackage rights agreement?
13 THE WITNESS: No. The trackage rights
14 are a handful. So, again, I'm not sure. I would
15 guess it is also in the hundred range, just off
16 the top of my head.
17 BY MS. MULLEN:
18 Q. And interchange agreements would be --
19 you're saying trackage rights and the interchange
20 agreements are the same?
21 A. They are very different.
22 Q. In number?

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1 A. No. We have a very, very small number
2 of trackage rights with Norfolk Southern.

3 Q. And that's your reference to a
4 handful?

5 A. Yes.

6 Q. By handful, what do you mean?

7 A. Ten. Fewer. I'm not sure.

8 Q. Does CSX have trackage rights over the
9 portions of Norfolk Southern's rails that would be
10 used to reroute the banned materials?

11 A. No.

12 Q. Is the refusal of Norfolk Southern to
13 provide trackage rights to use, is that the only
14 reason why you can't follow the mandates of the
15 ordinance if it is effective? Is that the only --

16 MR. NATHAN: I object to the form of
17 the question.

18 If you can answer, you can answer it.

19 THE WITNESS: I really don't
20 understand the question, frankly.

21 BY MS. MULLEN:

22 Q. What is the method for obtaining

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1 trackage rights?

2 A. The company seeking trackage rights
3 institutes a conversation with the company that
4 has the route that they seek to have trackage
5 rights over. That company is under -- there are
6 no laws or regulations that require the company
7 that owns the track to provide that access and any
8 right.

9 So they would only provide that kind
10 of right if it was something that -- they would
11 have to have their own reasons.

12 The request for track and rights, there
13 is no obligation in any way for the party where
14 the rights are being requested from to even enter
15 into the discussion. So it is a bilateral
16 agreement between two parties.

17 Q. Could you describe how many shipments
18 of the banned materials that have been transported
19 on the east-west rail since May of 2004?

20 A. Again, I'm not sure I understand. Just
21 the total number of shipments loaded and empty on
22 the east-west line? On an annual basis it would

1 be the difference between 11,400 and 3,687 on an
2 annual basis. That's not the number since
3 October. That's the order of magnitude that we
4 are talking about.

5 Q. And that is captured in Exhibit 2?

6 A. Yes.

7 Q. Under the column that says annual
8 shipments and empty trips, right?

9 A. Yes.

10 Q. Where were the materials voluntarily
11 rerouted to?

12 A. Well, again, the exhibits describe
13 some of those reroutes. We did not aggregate by
14 route which way these flows occurred. But by
15 example I can show you, you know, some of the
16 reroutes that were required.

17 I think there is one in here, a
18 chlorine shipment to the Richmond water treatment
19 facility, coming out of the New York, Niagara, New
20 York area. So we went west and then south and
21 then came into Richmond on other lines.

22 Q. Is that Exhibit No. 4 or Exhibit G,

1 rather? I just want to make sure we have the
2 right exhibit you are referencing.

3 A. I think we need to make sure we have
4 the description. That was 34, paragraph 2. Does
5 it say which exhibit?

6 MS. SPRAGUE: E.

7 THE WITNESS: Let me look at that to
8 make sure.

9 Yes. Exhibit E.

10 BY MS. MULLEN:

11 Q. Paragraph 34 deals with hypotheticals,
12 does it not? Not actual rerouting?

13 A. No. These are both -- let me see. The
14 chlorine move is an actual move. And since the
15 traffic from Mount Holly, North Carolina going to
16 Delaware would have gone on the I-95 route, I
17 believe they are both examples of rerouting.

18 Q. Of actual rerouting?

19 A. Right. Because they are not moving
20 that way now. This Mount Holly example, if it

21 were -- it could be one of those ten cars we
22 talked about. So it is possible that it is the

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1 theoretical one at this point in time. But we
2 don't have the commodity. I don't recall what
3 the commodity was.

4 Q. How would we find out what the
5 commodity was?

6 A. I would have to look.

7 Q. It would be in your records?

8 A. Yeah. I know who described that. He
9 would have that information.

10 Q. Who is that?

11 A. It is the guy that works for me.
12 Michael Swain.

13 Q. So both of these are actual examples,
14 to the best of your knowledge, of voluntary
15 rerouting?

16 A. Yes. Unless, of course, this Mount
17 Holly move happened to be one of the ten that were
18 subject to the act, but not part of the voluntary
19 rerouting.

20 Q. Thank you for clarifying that.

21 Have you increased your costs to
22 shippers affected by the rerouting at all?

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1 A. I have no knowledge of that.

2 Q. So it is fair to say that as of today
3 you don't know whether your company has increased
4 the cost to shippers to cover the costs incurred
5 associated with rerouting?

6 A. That's right, I do not.

7 Q. Who would know that?

8 A. Someone in our sales and marketing
9 area. I'm not exactly sure who would be familiar
10 with this, any of these particular moves. I mean,
11 again, going back to the earlier theme, I also
12 don't know how they would charge an adequate
13 amount because, again, the indirect costs are
14 really not measurable.

15 Q. Are you saying that it would be an
16 impossibility to pass the costs on to the
17 consumers?

18 A. No. I am just saying I have no -- I

19 also don't know how you could accomplish that,
20 since so much of the costs are unknown.
21 Q. Is the CSX traffic that is southbound
22 from Ontario, New York, and Massachusetts, that

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1 area, and destined for the East Coast points south
2 of D.C. currently routed through Ohio?
3 A. It depends on where in the Southeast it
4 is going and where it originated. Your areas are
5 too broad.
6 Q. Too broad?
7 A. Yes. We have regular through trains
8 that operate entirely through New York,
9 Philadelphia, Washington, Richmond and south, and
10 they gather traffic and empties in both
11 directions. So we do have merchandise trains
12 that go only on that route.
13 We also, if you are, depending on where
14 you are, on what we call the water level route in
15 Albany and Cleveland and where you are destined,
16 there is traffic that moves towards Cleveland and
17 then south, for instance, if it is going to
18 Atlanta, which is also in the Southeast.
19 Again, our model, what we use to make
20 these decisions, gives us service routes with the
21 fewest handlings. So the geography of where it is
22 coming from and going to dictates the route based

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1 on those dynamics, and it doesn't change, you
2 know, except by the geography that we are
3 specifically talking about.
4 Q. So if I were to ask you what shipments
5 go through Ohio, what factors would have to be
6 known to answer that question?
7 A. Which shipments? Of anything?
8 Q. Well, all right. Start there.
9 A. Well, we do not dissect our
10 transportation geography by state lines. We do it
11 by nodes. Again it is a hub and a spoke. So I
12 could tell you how much traffic came through
13 Cleveland and Cincinnati. I could not tell you
14 exactly how much crossed the state line between
15 Cleveland and Albany. But I could tell you what
16 got to Cleveland, and generally where it came

17 from, because we have local operations and trains
18 that serve specific customers.

19 Whether or not that would capture -- I
20 am certain that would not capture all of the
21 traffic that entered the state of Ohio once you
22 had the major hubs identified, because of the

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1 local operations and the shipper operations.

2 Q. Have any cars been rerouted on the
3 east-west rail?

4 MR. NATHAN: That was asked and
5 answered several hours ago.

6 THE WITNESS: I don't understand.

7 BY MS. MULLEN:

8 Q. There is the east-west rail, correct?

9 A. Yes.

10 Q. The question is, if there has been any
11 rerouting on the east-west rail?

12 A. Rerouting of what?

13 Q. Of cars.

14 A. Well, you know, in that October to
15 January data that I looked at, where we have the
16 ten cars, for instance, within that data were car
17 counts of empties and loads on the east-west line
18 before and after May, when it was implemented.
19 And of these commodities that would be affected by
20 the D.C. Act, the volume on the east-west line
21 actually went down. But I cannot tell you the
22 cause of that going down. It could have been

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1 change of mix. It could have been the kinds of
2 customers and where they are shipping. It could
3 be seasonality impacts. There is a number of
4 factors that it could be.

5 It could also be that some of the
6 north-south traffic was turning the corner or, you
7 know, making a move on that east-west line; and
8 when we rerouted the north-south traffic, we also
9 reduced some of that. I don't have any analysis
10 of what those factors are.

11 MS. SPRAGUE: But you weren't directed
12 to take cars off that line?

13 THE WITNESS: No.

14 BY MS. MULLEN:

15 Q. Could you describe any systemic
16 problems that you are aware of that occurred
17 after May of 2004 as a result of voluntarily
18 rerouting?
19 MS. SPRAGUE: I think he has answered
20 this question in detail as well.
21 MS. MULLEN: The objection is asked and
22 answered.

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1 You can tell us the systemic problems.
2 THE WITNESS: Okay. Can I go back and
3 hear what I said before?
4 MS. MULLEN: That was an excellent
5 answer. I was wondering if there was anything
6 you left out in your description of what the
7 problems were. It didn't seem they were of any
8 great consequence, so I didn't know --
9 MS. SPRAGUE: I object to that
10 characterization.
11 MS. MULLEN: That's fine.
12 BY MS. MULLEN:
13 Q. Is there anything else you would want
14 to add?
15 A. I don't think so. It is obvious to the
16 passenger operations in this area. It is obvious
17 to our local managers. It is obvious to me that
18 we have part of a network that cannot afford
19 inefficiency, that it operates poorly with regard
20 to passenger schedules; and any additional
21 inefficiency has a much higher, an inordinate, if
22 you would, impact on delay and on the ability to

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1 operate a clean network, because we are at
2 capacity.
3 Q. Are you aware of CSX having new
4 security measures as a result of terrorist
5 threats?
6 A. Well, again, with respect to passenger
7 operations, I am generally familiar and
8 specifically familiar with some of those.
9 Q. Do you know if CSX has prepared any
10 studies regarding the impact of the D.C. Act and
11 the security measures that are already in place
12 with CSX?

13 MR. NATHAN: I don't understand the
14 question
15 THE WITNESS: I don't understand.
16 BY MS. MULLEN:
17 Q. In other words, is CSX of the position
18 that the act is unnecessary because of security
19 measures already taken by your company?
20 MR. NATHAN: I object to the question.
21 Our position is this statute is unconstitutional
22 and pre-emptive. I don't know what "unnecessary"

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1 means.
2 We are not passing on the necessity of
3 it. It is not within the power of the District to
4 pass this legislation. That is our legal
5 position. And I don't think it helps to ask this
6 witness questions about our legal position.
7 You can ask him factual questions and
8 factual questions that relate to his affidavit.
9 That's what the judge limited us to. That is not
10 in his affidavit.
11 Would you please move on. That is not
12 appropriate.
13 MS. MULLEN: I understand the
14 limitations of the deposition. We weren't asking
15 for his legal position. But the plaintiffs have
16 represented in their memo, page 6, that new
17 security measures have been instituted by CSX.
18 I am asking for this witness's
19 knowledge of those security measures.
20 MR. NATHAN: First of all, it is not in
21 his affidavit. But we won't object to your asking
22 for his knowledge of the security measures. It

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1 may be that -- if he has any knowledge, it may be
2 that we will have to have this part of the
3 deposition sealed, because it may relate to
4 classified information.
5 But let's first take it one step at a
6 time. If he knows what they are, let's find that
7 out. Then we will have to discuss whether he can
8 discuss them with you in a deposition that has no
9 confidentiality provisions.
10 Again, I say this is beyond the

11 scope. But let's do it in order to expedite
12 things.
13 THE WITNESS: The first part of the
14 question that we are going to answer is what
15 again?
16 MR. NATHAN: With respect to hazardous
17 materials or freight, are you aware of new
18 security measures that CSX is in the process of
19 implementing?
20 THE WITNESS: I am aware of some of
21 that activity.
22 MR. NATHAN: Let's hold it there. I

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1 would think the question is, any of that
2 information that he is aware of, would that be
3 classified information or highly confidential
4 company information?
5 MS. MULLEN: You took the words right
6 out of my mouth.
7 MR. NATHAN: Fine.
8 THE WITNESS: Well, they are
9 countermeasures. So if they are out in the
10 public, I would think that's kind of a problem
11 from a security standpoint.
12 BY MS. MULLEN:
13 Q. We were just asking you if they are
14 classified. Is that information considered
15 classified by the company? It is not public
16 information?
17 A. It is not public information, no.
18 MS. MULLEN: Then we are not asking for
19 you to disclose anything.
20 MR. NATHAN: Thank you.
21 BY MS. MULLEN:
22 Q. And it is my understanding, given the

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1 answers that you provided today, you are not
2 really the person who deals with that aspect of
3 operations at CSX. Is that true?
4 A. Which aspect of operations?
5 Q. The security aspect.
6 A. Right. We have the statement of "Skip"
7 Elliott at the council meeting, I believe. And
8 what he says, as I read it, is that we have a

9 security plan, and that is also confidential. We
10 base that and all of our actions on consulting and
11 conferring with the Federal authorities that are
12 appropriate to that, and we voluntarily went into
13 the reroute as a result of those, and as to when
14 that would end, there would be consultation again
15 with the Federal authorities that deal with that.

16 Q. With respect to its voluntary
17 rerouting, Exhibit No. 2 is the only analysis
18 that has been prepared of this nature. I know
19 you have other exhibits that further extrapolate
20 on your position. But this is the only analysis
21 that we have?

22 MR. NATHAN: The analysis is in his

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1 affidavit. And you went through this several
2 times. You asked this question four times, and
3 you are trying to misled this witness.

4 This is a document that reflects some
5 of the numbers that are in the analysis that is
6 in his affidavit that he has explained to you
7 repeatedly today. And to minimize that one
8 document, Exhibit 2, is not a fair reflection of
9 what he has been telling you all this
10 deposition.

11 That is a written statement of the
12 number of cars as reflected by the analysis which
13 is a computer analysis that has been done, and
14 that is a memorialization of the numbers reflected
15 in the cars. That's what that represents. It
16 does not represent the complete analysis.

17 MS. MULLEN: One, I resent and object
18 to you pointing your finger at me. Two, I object
19 to the speaking objection. Three, no one is
20 minimizing the report. I am simply making sure
21 that this is the only analysis that we have. That
22 is not a comment --

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1 MR. NATHAN: That is not a comment --

2 MS. MULLEN: May I finish? That is not
3 a comment on the quality of the analysis. It is
4 simply a question of elimination.

5 MR. NATHAN: It has been asked and
6 answered repeatedly. It is not the full

7 analysis.
8 MS. MULLEN: I think the point is made
9 abundantly clear.
10 BY MS. MULLEN:
11 Q. You have no other document that is a
12 computer analysis of the rerouting in the District
13 of Columbia area?
14 A. Of these commodities so covered by the
15 act?
16 Q. Yes.
17 A. Correct.
18 Q. Where is the data, the documents that
19 were used to create this chart?
20 A. You know, the model simply doesn't
21 work that way. There is a set of instructions
22 that was given to the computer. It draws from

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1 very large databases and extracts out the
2 relevant data and then it separates that.
3 So step one is you aggregate out the
4 STCC codes that are required. You pull all that
5 data and separate it. Then you take that data,
6 apply the 3800 STCC codes against the 330 yard
7 matrix and take out the link of, first, the
8 north-south line and then both the north-south and
9 the east-west lines and the computer gives you
10 that answer.
11 There is not, for instance, a stack of
12 printouts that you would go through and say, okay,
13 here is everything that the computer did. That
14 just isn't generated. So it is the same model we
15 use for everyday decisions made on every question
16 that comes up of this nature.
17 I did ask for the next best alternative
18 on one because you look at the map and say does
19 that make sense, and, yes, it makes sense, here is
20 an alternate route that might be the same and we
21 sanity checked it, that next best alternative, and
22 it was several hundred miles farther than the

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1 reroute that was in question.
2 So it is not -- on sophisticated and
3 large models of this type it is just not the same
4 kind of thing you might have seen eight or ten

5 years ago where there would be three stacks of
6 computer printouts. You say, well, it is all in
7 here. You can specifically get to the data you
8 want by the right set of instructions. So
9 somebody who is very familiar with this software
10 and programming accomplishes that.
11 Q. It is sorted and calculated and
12 computer generated on the information being fed?
13 A. Exactly.
14 Q. We have a question about this
15 document. It was the last one you produced for
16 us today. Database printout.
17 A. Yes.
18 Q. Could you just explain a bit more about
19 this document to us, so it has some meaning.
20 A. Right.
21 Q. As it stands, I don't know how to read
22 the document.

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1 A. I don't blame you for that. I am
2 looking for one -- let me find a segment I am
3 familiar with.
4 Q. Take your time.
5 A. Here -- all of these, they are part of
6 the PL&E subdivision, Bergin-Erie Lake
7 subdivision.
8 Q. Mr. Gibson is on what has been Bates
9 stamped as CSX 00364.
10 A. On this line segment -- again, it is
11 broken down into smaller segments, but on this one
12 there were 23 million gross ton miles in the north
13 direction, which would be east, and there were
14 29.6 million gross ton miles in the opposite
15 direction over a one-year period.
16 So if I wanted to know how many gross
17 ton miles ran across that line segment in a year
18 it would be the sum of those two numbers.
19 Q. Is the same information available on
20 carloads or is it analyzed that way?
21 A. No.
22 Q. It is just done on ton loads?

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1 A. The ton miles are used for a number of
2 reasons, but they give you a sense of track, how

3 many locomotives of what horsepower do you need
4 and the wear and tear that is put on the track
5 facility. It is basically a tonnage calculation.
6 The more you run over it, more of it wears out.

7 Q. Have you captured what is essentially
8 the value of this data and why it is used?

9 A. Yes, I think. It shows you the
10 relative density of different line segments across
11 our network. And, again, the point that it goes
12 to within the affidavit is a broad categorization
13 of lines that are heavily used and lines that are
14 kind of secondary main lines and local lines.
15 Another way of depicting that is to look at how
16 many gross ton miles are going over.

17 Q. Did this help form your affidavit
18 then?

19 A. General knowledge of this, it helps
20 with that.

21 Q. Not specifically?

22 A. Right. I didn't look at any of these

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1 specific line segments we are talking about in
2 terms of their tonnages.

3 MS. MULLEN: I have no further
4 questions. Thank you very much for your
5 patience, Mr. Gibson.

6 EXAMINATION BY COUNSEL

7 FOR THE PLAINTIFF

8 BY MS. SPRAGUE:

9 Q. Mr. Gibson, we were talking today about
10 agreements between Norfolk Southern and CSX or the
11 lack thereof, and I believe you testified that
12 there is not a trackage rights agreement covering
13 the NS routes that would be west of the District.
14 Is that correct?

15 A. That's right.

16 Q. But there is a standard form detour
17 agreement between NS and CSX?

18 A. That's correct.

19 Q. Could you describe the use of that
20 agreement.

21 A. The customary use of that agreement is
22 for the ability in emergency situations to allow

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1 trains, as opposed to cars, the trains to use
2 another company's route, only after they mutually
3 agree to allow that use, and only for a temporary
4 period of time, generally the amount of time it
5 takes for you to recover from the emergency that
6 is created.

7 So, again, a hurricane is a reasonable
8 example of that. When the city of New Orleans
9 closes its flood gates, our yard is separated
10 from our main line because it is on the other side
11 of the flood gates. We then need to be able to
12 route our trains that go over the New Orleans
13 gateway principally over the Norfolk Southern.
14 They may or may not agree to do that.

15 And in the case of the hurricanes that
16 we had, for instance, last year, one of those
17 hurricanes did enough damage to the NS route they
18 were not able to accommodate but a very small
19 fraction of the trains we normally would want to
20 move over that.

21 Q. Does that standard form detour
22 agreement have anything to do with the interchange

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1 of individual cars between CSX and Norfolk
2 Southern?

3 A. No.

4 Q. So in your view does that agreement
5 have anything at all to do with the subject
6 matter we have been talking about today?

7 MS. MULLEN: That's objection to form.
8 She is leading her witness.

9 MS. SPRAGUE: You can answer.

10 THE WITNESS: As to the questions, for
11 instance, in the exhibit that shows the Norfolk
12 Southern route compared with CSX route, which is
13 in G, Exhibit G, there is no agreement that would
14 permit that movement between NS and CSX and the
15 detour agreement is not available to accommodate
16 that move either.

17 BY MS. SPRAGUE:

18 Q. I believe you testified today that
19 interchange between carriers was commonly done.
20 Can you explain the circumstances in which
21 interchange is common.

22 A. Interchange is only allowed when there

1 is agreement between both carriers where the
2 interchange occurs, that there is an existing
3 agreement for interchange in terms of the physical
4 interchange itself, what track we will interchange
5 on and how would that interchange be accounted
6 for. And there is a specific agreement between
7 the carrier that is handing off the traffic in one
8 direction and the shipper and the carrier that is
9 receiving the traffic in the other direction and
10 that same shipper, and the shipper has dictated
11 that that interchange occur.

12 Q. What are the general circumstances in
13 which a shipper dictates that an interchange
14 occurs?

15 A. They can be service related and they
16 can be route related. We have shippers who
17 originate traffic at a CSX exclusive location and
18 their customer, the shipper's customer, is on a
19 Norfolk Southern exclusively served location.
20 Some form of interchange must occur in order to
21 get the car to the customer. So that is the vast
22 majority of the interchange movements that occur.

1 Q. In your experience would it be unusual
2 to take a car off CSX, run it over Norfolk
3 Southern and put the car back on CSX?

4 A. That would be very rare.

5 Q. If I could direct your attention to
6 Exhibit 2, I believe that you were asked early on
7 today about the number of cars that were involved
8 in the voluntary reroute, and I believe you may
9 have answered the question at a level of detail
10 that wasn't being asked.

11 Does Exhibit 2 help to answer that
12 question, how many cars have been involved in the
13 voluntary reroute?

14 MS. MULLEN: Objection as to the form
15 of this question.

16 THE WITNESS: Shall I answer?

17 MS. SPRAGUE: Yes.

18 THE WITNESS: On an annual basis we
19 would expect 1584 cars to be affected by the
20 voluntary reroute, that are loads. And that is

21 what we voluntarily moved, minus the 10 cars that
22 were part of the D.C. ordinance but not part of

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1 the voluntary. So the answer would be 1574 cars
2 were moved on an annual basis.

3 MS. SPRAGUE: I was trying to clarify.
4 I am not sure you got the answer to the
5 question. I was just trying to clarify.

6 MS. MULLEN: We're fine.

7 BY MS. SPRAGUE:

8 Q. I would like to direct your attention
9 to paragraph 12 in your affidavit.

10 Would you like to make any
11 clarification as to any part of that paragraph.

12 A. Yes. When the affidavit was prepared,
13 I talked to Scott Gordon and on his verbal answers
14 to questions about releases, I understood that we
15 had a one gallon release. In the documents
16 provided today that specifically describe that
17 through our reporting requirements, it appears
18 that that was actually a five gallon release. And
19 the written document would be more accurate.

20 Q. Do you have a general understanding of
21 the company's position with respect to the
22 termination of the voluntary reroute?

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1 A. A general understanding based on our
2 security plan as described by "Skip" Elliott, in
3 that this is voluntary. We are doing it of our
4 own accord. We are doing it in consultation, and
5 we would use that same process of consultation
6 with Federal authorities about as to whether that
7 reroute is still required based on the specific
8 information that is available from a security
9 standpoint, and we will do that prior to switching
10 back to the efficient operating plan.

11 Q. What would be the effect on the CSX
12 network of the passage by other city councils of
13 acts similar to the District act?

14 MS. MULLEN: Objection as to form. It
15 calls for speculation.

16 MS. SPRAGUE: You may answer.

17 THE WITNESS: Well, certainly the same
18 commodities with the same legislation, depending

19 on location, in two or three other municipalities
20 would eliminate our ability to serve any customer
21 on the East Coast with this type of material.

22 BY MS. SPRAGUE:

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1 Q. This is a final minor clarification.
2 I think you had said in the beginning of the
3 deposition that you had not given a deposition in
4 any other civil litigation.

5 A. Yes. I did not understand the
6 difference between what civil meant, I guess.
7 There have been arbitrations and Federal District
8 Court in one other occasion. Nobody was suing for
9 money. So I didn't understand what civil meant.

10 MS. SPRAGUE: That's all that we have.

11 MS. MULLEN: Just one moment.

12 Thank you, Mr. Gibson.

13 MR. NATHAN: Before we go off the
14 record there is something I would like to say.

15 First of all, I want to thank you for
16 your courtesy in being polite to us.

17 I am a little puzzled, however, about
18 the questions, because at the hearing last week
19 before the judge one of your colleagues told the
20 judge that he believed that Mr. Gibson's affidavit
21 was full of baloney and that it was not consistent
22 with what the D.C. Government understands the

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1 facts to be.

2 I haven't heard you challenge any of
3 the assertions in Mr. Gibson's affidavit.

4 Is there anything in this affidavit
5 that the District does not think is accurate? I
6 think now is the time to raise it when the witness
7 is here and we can test that.

8 That's what the judge said when he
9 allowed the deposition to go forward. I want to
10 know if there is any data here that the District
11 contests what it is, and we can have Mr. Gibson
12 set anything straight as to anything that is of
13 concern about the contents of this affidavit.

14 MS. MULLEN: Well, I certainly
15 appreciate your point, and what I recommend we do
16 is we take a break, and I need to talk to the very

17 lawyers who were at the hearing and did make those
18 representations, because I did not. I am not
19 questioning your veracity.

20 MR. NATHAN: Let's go off the record.

21 (Discussion off the record.)

22 (Recess.)

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1 MS. MULLEN: Back on the record.

2 Mr. Nathan had referenced part of
3 representations made at the hearing in this matter
4 before Judge Sullivan and had quoted from the
5 transcript. The quote, to make sure that the
6 record is complete, says, and this is page 43,
7 beginning on line 11, "Everything that's in the
8 affiant's declaration about what is a burden on
9 CSX we are told by folks in the community, by
10 people we are talking to, to be experts, that's a
11 bunch of baloney, that CSX has been doing this for
12 a year."

13 MR. NATHAN: That's a correct reading
14 of the transcript. I thank you for that, Ms.
15 Mullens.

16 My point is that having gone on the
17 record with court, saying that everything in Mr.
18 Gibson's declaration about what a burden this is
19 for CSX is baloney, and not having heard one
20 statement in his 20-page affidavit to be
21 challenged here today, I think is completely
22 unfair. We say that every statement in there is

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1 true and complete.

2 And if there is anything that is
3 challenged, anything you think is not accurate or
4 complete, I think the appropriate thing is to
5 raise that now so we can get Mr. Gibson's
6 response. After all, he works and lives in
7 Florida and there is not going to be live
8 testimony at the argument before Judge Sullivan.

9 So if there is anything now that you
10 think is not true, and I haven't heard one
11 statement here challenging that in six hours of
12 deposition today, that you think is not true, I
13 think it is appropriate and would be beneficial to
14 Court and to all the parties to identify a single

15 statement in there that is not true, that you
16 contend or the District contends is not true so
17 Mr. Gibson can respond to that.

18 And simply to say that you are going to
19 file papers later to challenge it when he will be
20 long gone does not seem to me to help the
21 situation. So I am asking you in light of the
22 questions that I haven't heard one statement

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1 contested, is there one statement or more than one
2 in his affidavit? The quote you heard from Mr.
3 Valentine that said everything in the declaration
4 about the burden is baloney, based on statements
5 made by others in the community that you are
6 relying on, I understand that, but what is it?
7 Where is the statement that is baloney? Tell us
8 that and let Mr. Gibson respond while we have him
9 here before we are adjourned. That's my request
10 to you.

11 MS. MULLEN: I appreciate your
12 position, but I don't agree with it. I think
13 that we were here for discovery today. I don't
14 think that it is incumbent upon me as a lawyer in
15 the case to do what you are requesting that I
16 do. This was not cross-examination. This was
17 discovery.

18 I'm certain that the office meant
19 absolutely no personal offense to Mr. Gibson, and
20 he will have an opportunity to respond to material
21 if, in fact, there are affidavits that contradict
22 his position. There is nothing in the rules that

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1 I am aware of that would prevent him from reading
2 and challenging those affidavits.

3 MR. NATHAN: Okay. All I know is you
4 are not asking him, you are not challenging in
5 his presence a single fact that is in his
6 affidavit. The record is clear as to what the
7 questions have been and what your position is.
8 We appreciate your position. Thank you very
9 much.

10 (Whereupon, at 3:25 p.m., the taking of
11 the deposition concluded.)

12 (Signature not waived.)

13
14
15